

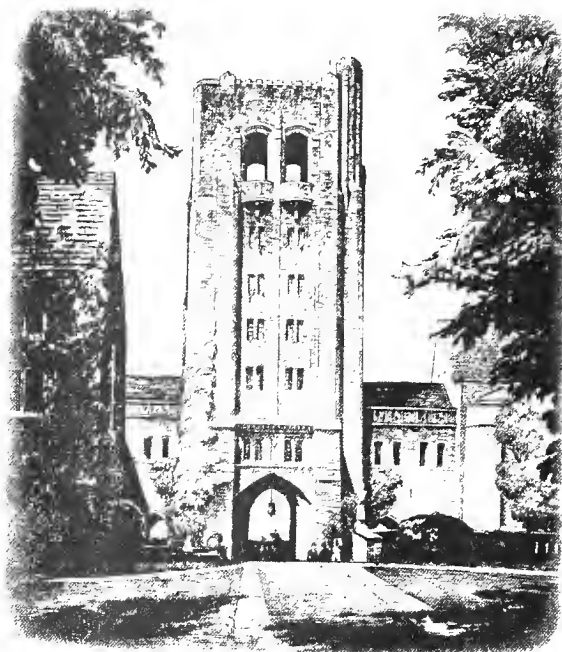
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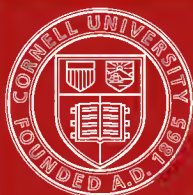


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LAW STUDENTS AND LAWYERS,  
THE PHILOSOPHY OF POLITICAL PARTIES,

AND OTHER SUBJECTS:

EIGHT LECTURES

DELIVERED BEFORE THE

LAW DEPARTMENT OF HOWARD UNIVERSITY,

BY

A. G. RIDDLE.



WASHINGTON, D. C.:  
W. H. & O. H. MORRISON.  
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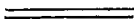
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TO THE  
GENTLEMEN OF THE FIRST GRADUATING CLASS  
OF THE  
LAW DEPARTMENT OF HOWARD UNIVERSITY,  
THIS VOLUME IS INSCRIBED.

THE AUTHOR.



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## LECTURE I.

### LAW.

IN assuming the duties of this chair, I can discourse of one subject only—Law. It is, in its higher aspects, the oldest and grandest of themes, while the ordinary field occupied by it is the commonest and the most hackneyed.

In any view which I may be able to take of it, no attempt will be made to say anything new; for although the subject is in no way exhausted, the labors of this chair will be to familiarize you with the accepted rules and texts as they are supposed to exist, without attempting much in the way of philosophizing or reflection.

My present purpose is to address to you some general considerations which, it is to be hoped, will enable you to get some glimpses of the field of our future labor as a whole.

I. Essential law—that which, when applied to matter, is its property, and which alone can fur-

nish the rule of morals, whether an attribute or an emanation of divinity, in the just estimate of a sound philosophy—is alone entitled to be called law. It alone is paramount and supreme. It alone is everywhere potentially present. It can never be escaped from, eluded, evaded, resisted or appealed from. No modification of it can by possibility occur. No repeal or suspension of any clause or provision can be hoped for, and no limit to it, in time, space, or eternity, can be contemplated.

Matter exists, is changed, and perpetuated by it, and necessarily mind and spirit are equally within its compelling and controlling embrace. And if indeed it enforces the perpetuity of matter, it may be claimed as a just corollary that spirit is necessarily indestructible also. It enforces itself. No matter by whom or under what circumstances any of its provisions are violated, detection, arrest, trial, and sentence instantaneously and inexorably follow, without remission or commutation of punishment; and whoever hopes to violate it and avoid its penalties, would do well to thoroughly understand and estimate his means of escape.

The study and ascertainment of this law is the



highest and grandest science; and a complete knowledge of it, as applicable to the conduct of men, will be the highest reach of the human mind, and an observance of it the greatest moral achievement.

In the direction of this attainment the race of men are slowly and blindly progressing. Stumbling upon the law, and learning its text usually by suffering its penalties again and again, and finding, by repeated experiments, that they cannot be evaded, slowly and almost imperceptibly men conform to its mandates.

II. We may only glance upward at this high theme while on our way to that which must occupy our attention. We are to deal directly with man's law—that which he enforces as emanating from himself, and upon his sole authority, to which he professes obedience, and which, as he may, he compels others to obey, because it is his law. When compared with the law as we have glanced at it, how weak and short and narrow and blind and futile it is! Professing to secure the right, it often becomes the means and instrument of wrong: the guardian of innocence, it often tears what it protects: the refuge of the

weak, it sometimes devours those who flee to its sanctuaries.

Compared with man's other achievements, it assumes the first place. What so venerable, so profound, so all pervading, so potent? Among all the helps that man has created, this has most aided him in his pilgrimage of progress. From its bosom sprang what we call civilization—that elder and shadowy sister of Christianity—if it was not one of the main instrumentalities employed to render that possible.

In the absence of order, no possession can be secure. In the absence of law, order is impossible. That nation or people which has been fortunate in the elements of its law, and which has had the sagacity to enforce and the wisdom to modify and improve it, as its condition changed and its wants increased, has gone forward to the first place among the nations; while others, unable to mould and enforce the original elements into consistent law, have remained barbarians; or who have permitted their laws to become fixed, have never been able to advance beyond the condition in which they were when their code was hardened and ossified into changeless forms.

III. Of things human, there is nothing of which the common estimate is so erroneous as of the law. It is popularly regarded as an interminable series of dark and cunningly-devised pitfalls, snares, and traps, invented by dark and cunning lawyers in the interest of fraud and injustice, where the unwary are caught and tangled, and where the guilty alone find refuge. There is an impression that, no matter how unjust a case may be, somewhere in some of the numerous books of the law, hidden away under the covers of its jargon and fictions, a rule can be found that will enforce and secure the success of that unjust case.

There is a vague supposition that, at some far-off old time, in some age of darkness and weakness, of misfortune and desertion, the lawyers laid their wicked heads together, and devised and imposed upon the world this dark and wicked code, and have managed to maintain and enforce it to the present time. And it is really believed that a dozen plain and honest-minded men could in a few weeks devise a plain, simple code, that could with immense advantage take the place of the whole existing body of our law. And men wonder why it has not been done. Indeed, it is

supposed that, if the lawyers could be kept out of parliaments and congresses and legislatures, this would have been done long ago.

Inasmuch as this is not likely to occur in our time, however desirable, we must turn our attention to the law as it exists, and master it as we may.

IV. The technicalities—terms of art of the law, which are popularly supposed to obscure it—are comparatively few, and of little practical importance. As you will come fully to know, the great body of our law came to us from our English ancestors; that once in its history it was written in Norman-French, and once also in poor Latin; and that, in translating it into English, a few Norman-French and Latin names and phrases were retained, as it was at that time thought that our English, in its poverty, furnished no equivalent.

These technicalities are merely a few of the old clothes, so to say, of the law. They neither contain its spirit nor express its force and beauty. They occasionally embody a maxim, and sometimes express a rule; and, as they are said generally to be neither good French nor pure Latin,

they do not much beautify the law, and are not at all in the way of its mastery by those familiar alone with the English.

V. I shall not attempt to give you a definition of law. You will find several in the books; and if, upon reflection, none of them appear scientifically accurate, you will remember that the law does not claim to be an exact science, and you will be at liberty to discover or invent a definition of your own.

When I speak of the law, I mean that mass of rules, mandates, and directions, whatever may be their origin or source, which is recognized among our people, to which their obedience is claimed, and which the courts and governments enforce against them, and which also includes the machinery and means of redressing wrongs and of enforcing liabilities, which exist among the subjects of governments to each other, and are due from them to the government.

The origin of law, either in time or the condition of society, is a problem which, in its own nature and surroundings, lies beyond the reach of solution. Its beginnings must have been with the commencement of government, and partook

of its rudeness and simplicity. Obviously, among the first objects of government is that of ordaining the relations between itself and its subjects, and of regulating their intercourse with each other; and this is the ordination of law, and comes very near furnishing a definition of it.

Speculative writers and theorists have endeavored to suppose a condition of human beings anterior to the existence of society among them, ere government or association had a beginning, when the man was neither son, father, brother, lover, or husband, and the woman neither daughter, sister, mother, or wife; for if any relation existed, it must have been upon some, at the least, implied terms—a time when no man had anything, and hence was without rights as between himself and fellows; when he did nothing, and hence was without rule of conduct; when he said nothing, and hence no rule of intercourse could exist.

This unnatural, preternatural, supernatural condition is called “the state of nature,” and must have preceded the time of the establishment of any of the laws of nature: a condition which could never have existed in fact, and which cannot exist in imagination.

Wherever and whenever human beings have associated, some terms of such association have in some form been observed. It is apparent that law must have preceded what we call civilization; yet exactly what civilization is no man has ever clearly defined. M. Guizot describes it as one thing, and Mr. Buckle says it is quite another. We hear of several civilizations, and of various stages and degrees of it, and we know many of its qualities and conditions; yet just what will constitute it, so that the absence of any part will reduce it below civilization, has never been ascertained. When may a people be justly regarded as civilized is not a question for us, but obviously at a time and under conditions which it has reached through the ordination and enforcement of some code of law, of which it is in some part the product.

We may suppose a people favored with wise chiefs and rulers, whose laws have wisely been improved, in such way as to catch up and fix in enduring forms its various acquisitions, until the sum total may be called civilization; and we should expect the reaction of civilization, or of its elements, upon their laws, which would in turn be improved, advanced, and perfected, thus en-

abling such a people to go on in uninterrupted progression.

But woe to that nation whose rulers, having, as they supposed, perfected its laws, decree and ordain that they shall remain unchanged perpetually. Such a nation, filling and shaping itself to the form and capacity of its law, would become itself fixed and petrified, and its laws, from being a source and power of progress, would become manacles and fetters that would render progress impossible.

Whoever glances even cursorily at the history of the law will be struck with the apparently fixed forms of the laws of the elder nations. It is said that it was the boast of the Medes and Persians that their laws never changed.

The legislative power was exercised, but at rare intervals. A period would be finally reached when a general code, the essence and aggregate of existing laws, would be formulated and promulgated, which was usually left unchanged, to work out its result.

The consequence was, that new causes, arising out of new enterprises, changes, and improvements, would be unprovided for, and without protection and remedy. Hence new enterprises



would perish, change would not occur, improvement would not be made, and progress rendered impossible.

In all nations of real progress, the history of their laws shows them also to have passed through a curious period of fictions—fictions of law. These were the inventions of bold, enlightened judges and lawyers, by which an old rule was extended to reach a new cause, or the old law modified so as to secure and protect a new interest, and without an apparent change of the law itself.

The history of the Roman and English law is rich with illustrations of this method of improving and perfecting the law, while there is said to be an absence of them in the laws of the Eastern nations. As a consequence, the Roman and English peoples advanced, while the Orientals remained stationary—indurated in the fixed form of caste. In modern times, among enlightened nations, the legislative power is active and constantly exercised, as the exigencies of a given people may seem to require, which not only renders further resort to fictions unnecessary, but in some of our own States the old fictions have been abolished by statute. This is particularly the

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case in States which have adopted what are called codes of civil procedure; for it was only in the remedial parts of the law—those which were concerned in the administration of justice—that fictions occurred.

VI. The principles of the law are few and simple, and consist of the abstract elements of pure right. And law is the human endeavor to apply these principles to the affairs of life—to compel their observance by men in their transactions with each other, and in their relations to government and authority.

The principles themselves are obvious, and their application to the rude and primitive conditions of men not so difficult. It is when men emerge into broader fields, climb to elevations, grow artificial, divide labor, discover science, create art, become luxurious, cultivated, and refined, when the powers of government become divided and delegated, that the very effort to apply and enforce the observance of these principles becomes difficult and doubtful, and the more so as nations advance. It then becomes necessary to create machinery, formulate rules, and to so adjust the whole that the law itself

shall ever attend all the transactions of the most advanced communities—be present and a part of them—always enforcing justice, always compelling the performance of duty and obligation, with a prepared remedy for every violation of right.

You see that such a system must in time become vast, complex, and highly artificial; that of the whole number of men few can master it; that its study and administration must become a specialty, requiring the entire time and talents of a class set apart for that purpose.

VII. The sources of law—the immediate fountains from which it springs, and from which it can alone emanate—are very obvious.

There is the direct law-making power, whose primary duty and right it is to devise and promulgate laws in the forms of edicts, mandates, or legislative acts, called statutes, no matter whether vested in one or many men. These, collectively, are known in the books as the written law. They are not evidence of what the law is, but they are law—law reduced to formal writing—and they alone are to be consulted in all cases arising under them. As these embody the declared will of the law-making power upon

given subjects, they stand as the exclusive law upon those subjects, changing, amending, or repealing all other and older laws in the premises, and can themselves be only changed or repealed by another exercise of the power which created them.

You will be surprised, when you come to learn, that while much of the active machinery of the law, used in enforcing its remedies, is furnished by these statutes, how few are the suits brought to enforce rights conferred by the statutes themselves.

We are to look to quite other sources for the law that describes and defines the rights usually enforced by suits. This law, in contradistinction to statute law, is called the unwritten law, or the common law. Its text was never reduced to writing authoritatively. None but the law-makers could do that. Written evidence of what it is, however, exists in abundance, and the study and mastery of this evidence will be your labor mainly; and that evidence is now found in the elementary text-books of learned writers upon law, and the reports of the cases tried and decided by the highest courts in given jurisdictions.

It is apparent that, no matter how or when a

given rule, use, or custom comes to be recognized and observed as a rule of conduct by a given people, generally and throughout their territory, whenever it is adopted and acted upon, it becomes a law, and is as binding upon a people, and will be enforced by the courts in the same way, as if it had been solemnly enacted and promulgated by the legislature.

Thus, then, usage and custom, especially in the elder time, were a fruitful source of law; and when a custom had been thus accepted, it remained the law until abrogated by a statute. One custom could never repeal or change another, nor can it overcome or do away with a statute.

It is thus seen that, whenever a parliament, a congress, or a legislature promulgates a statute, or the people, by common consent, accept a custom, so much is added to the body of the law, and that whenever one conflicts with the other the statute prevails.

Statutes and customs are general, covering large fields, and embracing a variety of cases, and do not enforce themselves; and hence it is necessary that there should exist somewhere a power whose duty it shall be to apply these general rules to particular cases. This power and correlative duty are vested

in the various courts, provided also by law. A party claims that a right or duty is due him from another by virtue of some statute or some rule of the common law, and he brings the party of whom he claims the right or duty, with the subject-matter of his claim, before the proper court to enforce his right, which we call a suit. The court, having the jurisdiction of the persons and subject-matter, proceeds to inquire whether any and what claim exists, and whether it is one that falls within the scope and meaning of any existing law, statute or common, and judges accordingly. This action of the court is the application of a general law to a particular case, for the protection and enforcement of a particular right, in which it determines what the law is, and whether it controls the case before it, using for that purpose the means the law furnishes, applying the rules of construction to the law, and consulting the decisions of courts in the same or analogous cases, and all in the spirit of the law itself: and its judgment is the law of that case. It determines what the law is under the circumstances of that case. When the decision is made or affirmed by the highest court, with power to pronounce in the premises, the law so found and declared,

from that time forth, becomes and is a part and parcel of the law of the land, whenever the same questions arise, and goes to swell the bulk of the common law. And as a perpetual evidence that such is the law, the case, with the judgment of the court, is reported, and, with other cases, is authoritatively published in books for the information and guidance of other parties, and especially as a perpetual reminder to itself and other courts that the law has been ascertained, and what it is.

This application of a general law to a special case is called jurisprudence, and, as you see, it is a perennial source of common law.

When you remember that, being at one time a constituent part of the British empire, many of whose statutes applied to us, whose customs and usages were ours, and whose jurisprudence was part of our law, you will understand that, in a general way, English and American law are one, and why we study the English text-books and read English decisions to our courts, as at least advisory of what the law is.

For your information I may here say, that there are now five of the higher courts of England, and others in Scotland and Ireland, whose decisions

may thus be read; that the decisions of the Supreme Court of the United States, and of those of the highest courts of each of the States, are also reported, and that each produces one or more volumes a year. You can thus form some estimate of the increase to the bulk of the common law. And I also say to you that, in my poor judgment, while the mass of the common law is thus rapidly swollen, its quality is not much improved: the labor of the bar is immensely increased, while its learning is hardly advanced, and this rapid multiplication of books of reports is becoming a serious mischief.

All these reports, in a loose way, are spoken of as authorities, and we now so regard textbooks. This is hardly accurate. By authority we mean a decision which is binding; which cannot be departed from; and which, whenever the same question arises, must decide it. In this sense the decisions of the Supreme Court of the United States control the subsequent decisions of that and of all the other courts of the United States, and are of the greatest weight in all the State courts, and bind them in all cases arising under any law or treaty of the United States.

The decisions of the highest court in each State



are binding in that State, and may be read as advisory in the courts of the United States and of the several States, and are conclusive upon all questions arising out of the statutes of that State everywhere.

In some instances, undoubtedly, a custom or usage had its origin in the decision by a court in a particular case: as when a court, at an early day, decided a case upon general principles. What it so decided so commended itself to men as just and proper, that by common consent it was accepted and followed as a business rule and habit, in a certain branch of trade or labor, and so originated a custom. But we know that in many instances, as in the law of commercial paper, the courts adopted as the rules of their decisions the usages of merchants, to prove which prominent merchants were brought into court to advise the judges what those usages were; and so of many other instances.

We thus have three sources of law: statutes, accepted and established usage or customs, and jurisprudence.

VIII. The law is a self-impelling, self-sustaining, and self-enforcing power. It has established

the rules and prescribed the means for ascertaining its own meaning; the rules for construing statutes; for ascertaining the existence of customs which rise to the importance of laws, or those more narrow, and which affect particular localities or certain persons. It prescribes the methods by which its remedial power alone can be invoked; marks out the paths which conduct suitors to its courts; the forms for stating the questions to be tried; compels the presence of parties, and the submission of their disputes to its judgments. It prescribes exact rules for the investigation and ascertainment of disputed facts; arms the parties with power to compel the evidence of witnesses; defines and describes all instruments of evidence, and compels their production. It provides the means of estimating and weighing evidence and determining its sufficiency; and, finally, it is armed with ample power to enforce and execute its own judgments and decrees.

IX. The field occupied by the law, and where it works its purposes, as well as the instrumentalities which it employs, are low, common, and practical. It deals with money values alone. It exacts money for injuries to the sensibilities; puts

coin values to paternal and connubial affection, and measures broken hearts, wounded loves, and damaged reputations by the standard of the circulating medium; and when it puts an end to a man's life, it piously prays God to have that mercy which it refuses.

If any possible claim or demand can arise which in its nature is not susceptible of a cash value under the rules, the law decides that there is no property interest in it, and refuses redress.

It deals with actions alone, and never with intentions. It punishes the act, and never a mere purpose of the mind. It is true that, to determine the quality of the act, it inquires as to the intention with which it was done; but then it assumes that the party intended to do what he did do; that is, he is presumed to have intended all the natural and necessary consequences of his acts: so that the proof of the act also ordinarily proves the intention, if the party was capable of forming an intelligent intention, and to help that out, the law presumes that every man is capable of forming and acting upon such intention.

The law never, in any direct way, attempts to prevent crime: it punishes the actual commission of it. Wherever it sees a sore, it slaps on a

caustic or cuts off a limb or head, without inquiring into the cause or troubling itself about the effect of its treatment. It never establishes and endows schools for virtuous education and moral-training, but it sets up prisons and appoints hangmen. It questions its right to compel children to attend school, but entertains no doubt of its ample authority to hang men. It offers no rewards to virtue, but has an abundance of penalties for crime. It attempts in no way to deal with what are called sins, and claims no jurisdiction over the sentiments, emotions, and affections. It has no means of ascertaining their existence and quality, and disclaims all jurisdiction over them. A man may go steeped to the lips with malice prepense, but so long as he refrains from acts, he commits no crime against the law of the land.

Man, for a wonder, is humble in the consciousness of his weakness in these premises. He leaves this whole subject in the hands of Him who shapes and moulds the heart and rules its affections, as easily as he gave to matter that property which determines the forms of crystals.

It is thus seen that the law never idealizes, and never attempts to step from the dead level of the

common-place and the humdrum. It is rude, coarse, practical, and excessively vulgar. It calls things by their oldest-fashioned Anglo-Saxon names, where it avoids old barbarous French or bad Latin, and it roughly deals with everything in the rough.

It has, nevertheless, in a grim way, a tender, lovely, and benignant side. It not only schedules, defines, and broadly attests our ownership of all our rights, privileges, and powers, but warrants and assures to us their uninterrupted possession and enjoyment. It protected us and the persons of our mothers ere birth; it was present to secure from harm at that event; stood around about our cradles; attended us in childhood; went with us through youth; stood to crown and arm us with the rights, immunities, franchises, and privileges of manhood; opened and guarded all the paths of honorable pursuits; secured to us all our acquisitions; fenced and protected us from all wrong; was present and secured to us good faith in all our transactions with our fellows; made our persons sacred; was present and consecrated our nuptials; stood about and protected our homes; secured to us the custody and obedience of our children; and breathed about us

and filled our atmosphere with its sacred influence, which we denominate "the public peace"—that sense of absolute safety and security, which can come alone from all-powerful, ever-present, ever-watchful law; any infraction or disturbance of which is punished as a grave offense against the State.

Living as we do, as we always have, in the protecting arms of such law, we cannot appreciate its priceless benefits or estimate its value. To us it is a second Providence, which always was, and the absence of which we can neither appreciate nor apprehend.

X. The law is at once a despot and an embodied democracy. In its contemplation and presence all human beings stand on an absolute level. It knows them only as persons. It has no power of perceiving a possible difference among them. It does not know that there can be advantage on the side of wealth, or that high position can exist. It cannot comprehend poverty, or that rags and squalor can disqualify and degrade. In its grim way it applauds only those who follow its precepts, and frowns only on those who violate them. It occupies a height above the highest, and still

has its protecting arms under the lowest. Those who make it are its subjects, and those who break it its only enemies. Governors obey it abjectly; and those who violate it, even while it punishes, are still the objects of its care and solicitude. Magistrates are strong only in its strength, and like others become the objects of its animadversion when they transcend its commands. The dearest thing to it is a human life; and whatever it esteems as the property of a human being, it makes sacred, because it belongs to a person. In its estimate a murderer is the greatest criminal, and the perpetrator of a fraud the most odious of men. Mercy is no quality or attribute of the law, and sympathy and compassion are sounds which convey no meaning to it. Coldly and colorlessly it embraces all, shelters all, compels all, and protects all.

The law occupies and fills all human space and everywhere with the same vitality, strength, and power. As it can know no difference in person, so all possible places are alike to it. No altar is a sanctuary from it, no retreat a refuge, and no walls or bolts or bars a barrier against it. Stronger than all other power, those who defy or resist it can find security alone by overthrowing the gov-

ernment that ordained it. There exists nowhere a power that can suspend its rule, divert it from the object of its pursuit, or exempt persons, places, or things from its visitation.

XI. Law is not an exact science. Its uncertainty has passed into a proverb. I say to you, however, that this uncertainty does not arise from the uncertainty of the text of the law. There is generally little doubt about that. The rules are generally clear, and the books free from ambiguity, and you will find no great difficulty in understanding them. The uncertainty usually arises in the doubt about the facts, to which a known and clear rule can apply. Thus, if A owes B, the law, with absolute clearness, declares he shall pay him what he owes. B makes his demand of payment, and sues A for the debt, and A comes into court and denies that he owes B; and this is the matter to be tried—the alleged indebtedness of A to B. It is usually a matter of fact that is involved in this investigation, and witnesses are called and examined on both sides. And they differ; they contradict each other; perjury may be committed; and the gravest doubt may exist as to the facts; and so the clear, plain rule



of law stands idly by till the facts are ascertained and established; and, as you see, the doubt and uncertainty is only that which attends the ascertainment of a human transaction. And so of "the law's delay." The law never delays. It is always ready, and so are lawyers. They have no purpose but in pushing their cases to trial, for usually they are not paid till the end is reached. The delay usually occurs in securing the evidence, and often by the tardiness, inattention, or the doubts and fears of those who commence the suits.

XII. The strength of the law is the measure of the power and strength of the government that seeks to enforce it.

That government is strong which enforces all its laws effectively; that is weak or inefficient which cannot or does not. A government that permits itself to be defied by its own subjects, on its own territory, cannot long retain the respect of any of its subjects, and is contemptible in the eyes of other nations. It was this consideration, among others, that compelled our own Government to the hard necessity of subduing, at all possible hazards and without reference to cost, the late rebellion. If it could not enforce its laws

in Charleston and Richmond, it lost the power of doing it in New York and Chicago; and that patriotism which found its limits in the boundary of a single State, compelled a citizen of a loyal State to battle for the supremacy of the General Government in all, for in that alone could he find assurance that his own should remain in peace and security.

It may not be critically accurate to say that the strength of the law is the strength of the government that seeks to enforce it. There is another subtle, intangible, ever-present, and all-pervading influence, often stronger than the sum total of the powers of the government, and which habitually governs and controls the government. We call it public opinion, and it may be said to be the popular judgment upon a given subject. It is the result to which the thinking, reflecting, intelligent come in given premises. This is not quite accurate, for it often happens that a matter is of such general interest that it addresses itself directly to the masses, who do not think and reflect much, and yet who pronounce upon it, and whose judgment is entitled to be called public opinion, and which for the time is potent.

A statute enacted by a legislative body, elected

by the mass of the people, ought to be taken as a fair declaration of popular opinion, but it is not always. There are some subjects upon which the masses desire no legislation, and yet upon which their representatives feel constrained to act, and the result is a law not in accord with popular opinion; and it will be found that the act cannot be or is not enforced, because it is counter to public opinion. This is not invariably the case, for among the most odious of the laws are those which assess and collect taxes, and yet governments have usually been able to enforce them, partly, perhaps, because the governments employ extraordinary efforts for that purpose, and partly because, however obnoxious, the owners of wealth and men of position and influence feel the necessity of their enforcement, and the mass acquiesce, while many of the most dangerous class are without property, and hence without any motive to resist the law. I refer you, in illustration of this idea, to statutes prescribing punishment to certain crimes.

The laws of all the States and of the United States punish murder with death, and yet it is rare and growing more and more difficult to procure convictions for murder. Indeed, the law

itself long since invented a very remarkable test of the qualification of a person to sit as a juror in such a trial. The government is permitted to ask the proposed juror if he has conscientious scruples about the infliction of the death penalty; and if he answers that he has, the courts hold that he may be challenged for cause.

It is becoming obvious that public opinion is adverse to the infliction of death as a punishment, and it clearly is wholly illogical. So statutes for the punishment of gambling; statutes to suppress the sale of intoxicating liquors; and statutes for punishment of crimes against chastity. Although they are found on the statutes of every State, yet they everywhere remain comparatively a dead letter. They are not enforced, and as a general rule cannot be. Legislators have felt constrained to enact them, but public opinion does not sustain them: indicative of a condition of morals which I commend to the reflecting.

What shall be done with statutes that cannot be or are not enforced? They are a reproach either to the legislature or the people, and tend to bring the administration of all law into disrepute.

The statute enforcing the death penalty is un-

doubtedly below public opinion, while the others are as clearly above it. A law below it ought to be brought up to it, while I should hesitate to lower one that was above to its level, especially where its purpose is the promotion of purity. I would at least have the statute-book declare against vice, and labor to change and elevate public opinion to the standard of the law. The repeal of the statutes referred to would necessarily have a mischievous tendency, obsolete as they are.

I may remark that the sources of many vices and crimes lie too deep to be effectively reached by mere legislation, which is necessarily superficial.

You cannot enforce the requisitions of Christianity or eradicate sin by statute. Public opinion sustains, for a time at least, a law derived from usage; otherwise, it would not have become a law. When public opinion becomes adverse, a statute abolishes it. It also sometimes controls the verdicts of juries, in violation of clear law, and in opposition to clear evidence. Repeated instances of this have recently occurred under our eyes, until thoughtful men have become alarmed. Whenever man or woman, in revenge

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for a fancied or real injury to female honor, takes life or attempts it, juries, as a rule, find the absurd plea of insanity to be true, and acquit. The instances of murder trials are of this class.

As lawyers, we have to do only with the administration of the law as we find it. We come to know its defects, and are sometimes pained by its practical results; and it is often in our power to suggest valuable amendments and improvements.

XIII. Thus, gentlemen, have I endeavored, in this brief time, to introduce to you the law as a whole. I trust that in some way I have given you glimpses of its grandeur as a mere human achievement, and have enabled you to appreciate somewhat its importance as the regulator, director, and protector of our conduct, persons, and acquisitions.

You will now take up its leading principles, master their unfoldings, and become familiar with their relations to human conduct and affairs. Passing forward, you will follow the extended lines of their various applications to the vast and varied interests which men, in the most artificial

conditions of human society, create and acquire. You will wonder as you wander through the mazes; you will admire and master the subtlety of the law's logic, and learn to appreciate the nicety and importance of its distinctions; and, more than all, you will love and revere its constant, ingenious, and ingenuous endeavor to do justice, promote the right, defeat fraud, and punish the guilty. You will finally learn to love the law, and become loyal to it as the paramount object of veneration created by man.

## LECTURE II.

### LAW STUDENTS AND LAWYERS.

I. We are about to enter upon an experiment, and that its conditions and hazards may be appreciated, I propose to make them the subjects of my present discourse.

You purpose to become practical lawyers, and you come to us to aid you in acquiring such a mastery of the law that you can enter favorably upon its practice.

Under any circumstances the undertaking is a serious one, and doubly so in your position. You are of that race—are its representatives—which has labored in physical and mental servitude, and suffered from political and social degradation from the planting of civilization on this continent. I do not care to speculate as to the influence of these upon your race or upon its representatives, nor do I trouble myself with any question of race, or the comparative mental status of races ; but it



is fair to remember, in forecasting the probabilities, the chronic, unreasoning, and brutal prejudice which denies you mental excellence of any kind—which declares you are without intellectual vigor and inventive power, and destitute of strength to grasp and persistency to retain and master any complex or profound proposition. You commence your trial before a jury whose pre-formed judgments would disqualify them from sitting in any other case. Not only are you on trial, but your whole race with you—a race which is condemned for the failure of any of its individuals; while the success of every person of it is pronounced exceptional, and due to accidental conditions.

Gentlemen, you cannot afford to fail, not any of you; and the failure of one is the failure of all in the wise world's judgment. You must not only equal the average of your white competitors; you must surpass them. The world has already decided that a colored man who is no better than a white man is nobody at all. You make good soldiers; you succeed as teachers; you sometimes surpass as preachers and public speakers: but it remains to be seen whether you are equal to the hard, tough, strong, and long-continued struggles of the bar: in some respects the severest test

that can be applied to a man. You cannot afford to fail, and yet the world will be slow to admit your success, until, perhaps, you shall have produced an Attorney General or a Justice of the Supreme Court of the United States.

For myself, although I come to the duties of this position against the wish and protest of many valued friends, I come cheerfully and hopefully to their performance. I am only embarrassed by a conscious lack of qualification. I am not a bit of a professor. I come from the *nisi prius* courts, where all my life I have been, and still am, too busy for the thorough, extended, and varied reading without which one can be but poorly prepared for this chair. I am not, however, without the hope of being able to impart to you much useful and practical information, and to aid you in the most important part of preparation for your future duties. We must not fail.

II. One further preliminary remark I must be indulged in. I want to feel assured that all of you now before me enter upon the study of the law with the full determination to pursue it as a life-long calling. I shall feel little interest in attempting to place in your hands imple-

ments that you never intend to use, and of stocking your minds with a knowledge that is to remain unproductive. For you, while its acquisition would be good mental discipline, and not without a possible incidental benefit otherwise, yet in this busy world, and with its hungry demands upon you, time spent in dalliance with the law would be a comparative waste, and a misapplication of illy-directed effort. A man who did not intend to pursue the law as a calling would never thoroughly master it; and among all useless things the half lawyer occupies the first place.

It was long ago said by one of the first lawyers, that law is a jealous mistress; and I say to you, she never flirts or coquets; she will have nothing to do with dangles; and reserves her favors for those alone who woo in good faith and with the most honorable intentions. The love of the law is an acquired sentiment, and no mere student, from love alone, ever pursued it effectively.

I want you should come to the study of the law with the manly purpose of making it your own—of subduing and mastering, and to compel it to become your property, your possession, your servant: one that you are to use—your capital, on

which you are to trade. I want you should feel that your life and hope, your acquisitions and ambitions, depend upon it; and without something like this you will never become lawyers: you will at best be but smatterers or pettifoggers. Nor would I have you enter upon it with the idea of using it as a transfer to political life, or any other pursuit or calling. You will certainly fail as a lawyer. You would linger and dally in a half-hearted and wholly inefficient way, making the law a mere resting-place in a wayfaring career, like those young women who seek temporary places as clerks, or who coquet with engraving or phonographing, until the prince, in the guise of a husband, comes; and as it is not to be a life calling, they are inefficient and indifferent, and it is marked against the sex as incompetency in such pursuits, as in your cases it would be charged up against your race. Let us be in dead earnest in this enterprise, or let us abandon it now.

III. The work of a slave is servile and degraded, and because it is performed by a slave. The work of a king is royal, and because a king does it. By as much as the head is exalted above the hands

does the work of the brain rank above mere manual labor.

The study and much of the practice of the law is purely intellectual, which is one of the reasons that the uniform position of the bar is elevated; and while it will furnish ample scope for the finest minds, it does not necessarily call into constant exercise all of the highest mental qualities. The imagination and fancy—the inventive faculties—may not often be called upon, while those which enable us to perceive, compare, weigh, determine, and reflect, find more constant employment. It has never required the greatest intellect, at any given period, to furnish forth the greatest lawyer of its time; and yet the first places of the bar have never been reached save by minds of a very high order; while to achieve a fair average position much mental excellence is required. Of all the possible pursuits of men, the law is that field where seemings and shams can find no place or employment. Superficial and showy qualities stand no chance there, while wind-bags collapse under the mere pressure of the legal atmosphere.

If I was not wholly unhappy the other evening, you have some idea of the law, and that its study will require long, steady, and persistent labor.

You are to suppose yourselves in court with a case of some importance and some doubt, which you have well prepared for trial; that is, you have investigated, analyzed, and marshaled all the facts, and collated and collected the law, and are ready. You may suppose, however, that you have only mastered the facts on your side, and may expect some extraordinary evidence on the other, as well as further light upon the law, and you are there alone with your single self, to conduct one side of a serious, long-continued mental contest. You are to remain cool and self-possessed, with all your armor on, and all your weapons at hand. Your own faculties are to be all aroused, on the alert, and fully in hand. You are to state your case, examine your witnesses, get from them the best they know for you, and in the best way for your side. You are to be ready to argue unexpected questions of law, as to the admissibility of evidence, without time to consult books; to reply to such arguments from the other side; answer questions from the court; take exceptions to adverse rulings; cross-examine your adversary's witnesses; make and sustain objections to them. You are in some way to take and retain all the testimony in a protracted trial, and,

after four or five days of exhausting work, arise, with only such preparation as you can make while the trial is going on, and produce a clear, luminous, and logical presentation of the whole case, involving a discussion of all the law, and the aggregate result of all the evidence, in a final argument. You may then listen to the other side, and make your reply; watch the charge of the court, and be ready to except to the points in which you think the court erred at your expense.

You see, gentlemen, that to do all this reasonably well is a serious tax upon the trained and experienced faculties of an able man. Indeed, so extraordinary are these constantly-recurring exhibitions in our courts to laymen and the outside world, that they never cease to be astonished by them; and he who reasonably succeeds in them comes necessarily to receive a large share of merited admiration, and grows to be a man of mark.

IV. Of course, to commence a career that may reasonably be expected to conduct one to such success requires as a preparation some high degree of mental training, as well as a class and order of faculties capable in time and by effort of accomplishing it.

You have observed how difficult it is for a man accustomed to manual labor only, to execute or even apprehend long-continued mental effort. After two or three spasmodic attempts, he abandons it, just as one of us, of sedentary habits, is totally disqualified for any continued severe physical labor.

In your own cases, if you have not now, you can rapidly attain this power and capacity for mental work, just as you can rapidly acquire an ability to perform severe and continuous manual labor. Reading and the study of the sciences will do much for you, not only by way of discipline, but the accumulation of facts and information. Don't cram; don't glance at books, few or many. Master them; make it a point to master all you touch. Take the essence of your author; rob him of his soul; squeeze out all his blood; and make them yours. Don't lumber your memory alone with them; but think, digest, assimilate, till that which you have is part of you. Never mind a writer's words or his old clothes; don't borrow his shoes; but take the essential man, and devour him by a sort of mental cannibalism. Establish for yourselves regularity and fixed habits of study. This is one of the great advantages of training at



school. The mind knows how to work—has the capacity and habit formed. If you have not this, you must acquire it. Not books alone. Men, after all, are not wholly educated by books. That is a narrow and singularly erroneous impression, that we are educated alone at school and college. Undoubtedly we imbibe the germs of a majority of all our ideas before we can profit much by school or books.

Our essential practical education we get from association with the world. We inhale it from the world's atmosphere. It is knocked into us by our collisions; cut and pricked and shot in by our friends and enemies; by our successes and mishaps; by our questions and being questioned; by the conversations of the wise, learned, rude, foolish, and simple. It comes to us from the pulpit, the court-room, the platform, the market, the wharf, the railroad, the mechanics' shops—from wherever we go and from whoever we meet: and what is most wanted is a capacity to learn. And essentially the law student must graduate into the many-sided and accomplished man of the world, and become quick, shrewd, observing, and practical. The law that he studies is but the accumulated history of the manifestations of our

common human nature: the foot-marks of man's avarice, meanness, frauds, and vices; his ambitions, achievements, and failures; of the workings and out-croppings of his worst and strongest qualities, as they have revealed themselves in treasons, murders, and conspiracies; of his commercial enterprises; the colonizing of new continents, and his conquests of old kingdoms; of his noblest powers; his struggles for freedom; his wars for religious toleration; his battles for the press; of the play of his affections, and the flow of his charities. All this, too, may you profitably study in the living world with which you mingle. Learn to go about, then, with your eyes open, and get the power to see what is going on about you. Cultivate, not the length of your ears, but their capacity to hear. Take nothing for granted; question everything; test everything. Hear and understand the voice of the age in which we live, throb with its pulse, and receive the wonderful lessons which it teaches and preaches. Nothing is too high to be questioned, or too low to be overlooked, nor so common or usual as to be unprofitable. Every fact you shall acquire; every hint you may store up; every idea you obtain; every thought you can lay away; every item

that you assimilate not only adds to your magazine of useful stores—your arsenal of weapons—but has performed the double purpose of needed mental discipline.

Once again: You are to think, not merely accept, and pile, and pack away in the rough. You are to store only the real and useful; and that you may do this, you must think. You must not only perceive: you must learn to compare, estimate, weigh, arrange, analyze, combine, mark qualities, properties, and relations, and form judgments. Having taken in the raw, you are to work up, manufacture, and then store away.

V. I must not pass so summarily the matter of books and miscellaneous reading. Time can most profitably be spent on subjects somewhat akin to the law: the biographies of eminent lawyers, particularly those parts that recount their early years, the acquisition of their profession, and first struggles at the bar. Campbell's *Lives of the Chancellors*, severely as the work has been criticised, can be read with great advantage; so his *Lives of the Chief Justices*, which together constitute quite a history of English law, as well as a political history of the kingdom. Our own

literature is not rich with works of this character. There is a condensed history of the first three of our Chief Justices; the Life and Letters of Judge Story; the Biography of the elder Adams; Kennedy's Life of Wirt; and the Life of Henry by Wirt, which is a little mythical, like Plutarch's Lives; the Life of Daniel Webster; the Life of William Pinkney, though I cannot say much for this; and I am in doubt whether I can commend to law students Parton's Life of Burr, rich as it is. Works of the character of these furnish useful examples, store your minds with valuable information, and surround you with a semi-legal atmosphere, and excite, stimulate, and direct your ambition. So, too, as you can, you should glance at the newspapers, and not remain wholly ignorant of current literature. These last can come in for a larger space, when you have completed your preparatory studies, and have been admitted.

VI. I have said that the faculties most useful and most in requisition were the perceptive, the reasoning, and judging—those which we exercise most in our every-day, common-place, humdrum life; such as we can dig with, quarry with, accumulate, and retain with. We shall not have much

occasion to fly, and little for show or ornamentation for the present. All our faculties are to be used and cultivated, until all can be united and wielded as one—as a rapier to thrust; a broadsword to cleave; a sledge-hammer to deal blows; a piece of ordnance to batter with; a man-at-arms, steel clad, to make a charge.

The lawyer, too, must have a will of his own. As a student, he must master the law, because he will; and as lawyer win cases, because he will. No weak, infirm of will, easy-yielding, good-natured man ever succeeded at the bar, or ever will; and courage, moral and physical, are essential. There never was a really great advocate without both in a large share. Erskine, confessedly the first English advocate, was largely indebted to these endowments, if he was afraid of Pitt; and withal you should have a good share of combativeness—a readiness and willingness to contend, to fight on and not yield, and to fight the battle over when lost. It is the especial privilege of a lawyer to never give up a case.

VII. Among the qualities required for a successful study of the law, and for eminence in its practice, none are more imperatively demanded

than clean hands, pure hearts, and exalted souls. I shall refer to this subject again in these observations, and bring it more practically to your consideration.

The lowest motives for human action, as well as the highest, unite in recommending that absolute rectitude of conduct which can flow alone from the purest sentiments; for remember, the lawyer will always be opposed by one of equal or superior skill, whose object will be to detect and expose any departure from strict truth and good faith; and that, necessarily, all attempts in that sinister direction tend to injure alike the case in hand, and also the lawyer who exploits it; that, whatever may be the skill or ability of a member of the bar, a distrust of his integrity—a taint in the atmosphere of his practice—is usually fatal to his career. Whenever, by common consent, the members of a given bar deem it useful to watch one of their number, although the world may know no reason for it, he is pretty certain to decline.

I have also observed, and deduce from my observation this rule: that a continuous, healthy mental growth is only possible when accompanied by a corresponding moral development. Whether it is that the intriguing man of indirect courses

is obliged to devote so much time and attention to his sinister methods to work out his questionable schemes, and secure himself from the consequence of discovery and exposure, as well as the depressing consciousness of his want of integrity, render him unable and incompetent to so put forth and direct his efforts as to achieve the first mental excellence; or whether God has so constructed and ordered things that a true growth and expansion of mind can alone take place when accompanied with corresponding elevation and growth of soul, we may not determine. But we know that the higher and nobler qualities flourish best when they grow together, each imparting its excellence to the common soil from which all spring, and they strengthen and support each other. I have often, at the bar, seen a man of many excellencies of mind, but of doubtful expedients, passed by men of fewer mental gifts, but with a just appreciation of all moral obligation. The first would become a skillful, adroit, and unscrupulous manager, whom nobody trusted and everybody watched, while the latter passed steadily and certainly to the higher walks and honors of the profession. And I may, perhaps, be permitted to remark, that my ideal of the lawyer is one who is more

and better than the mere lawyer—one in whom the high elements of morality and religion are properly developed, and who unites in himself all the accomplishments of the Christian gentleman.

VIII. We are to study the law. Nobody has attempted to catalogue the present text-books of elementary law, the volumes to which the student is to devote his attention. The rapid growth of new enterprises, and the myriad multiplication of new cases, have created entirely new and vast fields for the labor of bench and bar, and are furnishing new and interesting themes for commentators and text writers; and the last few years are rich in these valuable contributions to our legal literature.

There are the new worlds of railroads, telegraphy, and life insurance, to say nothing of the vast additions and improvements made in the older titles of the law. No student is expected to read all these books, nor any considerable number of them. That would be impossible. No lawyer reads, and perhaps few buy them all. No man ever yet read, even cursorily, all the books, or fully possessed himself of the whole body of the law. To catch its soul; imbibe its spirit; master



its intent; comprehend and be able to apply its artificial reasoning; apprehend and appreciate its nice distinctions; to become so possessed and saturated with it that one comes to have a legal instinct, is about the highest attainment of the lawyer.

The student is expected, in the first place, to master its elements; that is, he must familiarize himself with its principles—thoroughly understand them. For this purpose we continue to place in his hands the still incomparable Commentaries of Sir William Blackstone. Snob, as he may have been called, and truckler to power, and excuser of tyranny and abuse, as well as eulogizer of old chronic wrong and out-grown customs and usages, and obsolete as one-fourth of his entire work is, and not wholly reliable as matter of history, it is still unrivaled, notwithstanding our Kent; and after Walker's Introduction, we still place it in the hands of students, and often as a first book. In this work you find the whole law epitomized in a wonderfully luminous manner. Here its principles are stated and unfolded in a way to be understood by the common mind. All the succeeding books which will be placed in your hands will be but amplifications of the head-

ings of Blackstone's chapters. In these you will trace out the practical applications of the elementary principles, and find them illustrated by a reference to actual cases, which will furnish the instances and manner, as well as the judicial reasons for such application.

We do not want you should read many books. We do not mean you shall. We do not expect that you will become lawyers under our hands, but we do intend you shall go from us with the means and intention of becoming such. We expect you will master the principles. We expect you will follow out their application in the law of contracts, commercial paper, copartnership, agency, common carriers, insurance, &c.; that you will learn something of the absurdly complex, artificial, and intricate law of real estate, that still disfigures our law of property; that you will thoroughly master the rules of evidence, of pleading, and so much of practice, that you can commence and conduct a common-law case.

We desire that you should secure a good understanding of that most important title—of equity—and learn at least the rudiments of criminal law. I do not care much about this last, although I have, I am sorry to say, been much in the trials

of criminals. That law lies in a narrow compass, and an ordinarily good commercial lawyer will master it without special study, when he has occasion to.

But whatever you attempt shall be well and thoroughly done. You will understand everything you touch, and we shall know that you do no superficial reading. No hop, skip, and jumping; no firing into game, and then leaving it to run or fly away. An obscure passage is to be made clear. A retiring principle is to be hunted down; a hidden meaning is to be uncovered; an obscurely-stated case is to be beaten and battered until it yields up its principle; and you and each of you must do this for himself. In no other way can you make the law yours. We cannot teach it to you from a blackboard. I shall not reduce and dilute it to babies' food for you. You must master it, as I know you will, man fashion. You will find difficulties, and we shall help you through them. With the Congressional Library open to us, we feel tolerably confident that we can help you through anything that may demand our help. We at least know where to find the law, and that is something, as you will come to know.

And so we will journey pleasantly and profit-

ably through our contemplated course ; and as we go on we will furnish you with tough questions to try your teeth on in the moot court, and you shall be set to write theses, and we will criticise them severely ; and in our rhetorical exercises we will aid you to become good public speakers, and not mere ranting mouthers; and when we come to offer you to the public at the end, it shall be astonished at your proficiency, and we shall all be satisfied.

IX. I may naturally, in this connection, say some words to you of the character and position of the profession of which you are to become members—a lawyer's estimate of his associates, which differs somewhat from the popular judgment, or rather prejudice.

Of the profession, and of lawyers as a whole and in the abstract, the world entertains some depressing views. It has a distrust of their integrity. They are placed in the worst positions in anecdotes, jokes, and stories. They sustain bad and sinister characters in novels and fictions, never being the high-minded heroes of romance. Indeed, it is supposed that the legal atmosphere is the death-damp of romance, love, and poetry, and fatal to the chivalric elements of heroism.

Lawyers have seldom written novels; and when they have, they as often pandered to the popular relish. There usually is some foundation in fact for most popular delusions, which are the result of some kind of observation and experience; and I do not know that, in this respect, the law has fared much worse than divinity and medicine. There always have been, as there will always continue to be, unworthy members of the bar. The profession, as a whole, is an exceedingly small body: so small that the misconduct of one reflects upon the whole, and in some way discolours the atmosphere of the law.

The estimate of the bar formulates itself in this expression, which we often hear from very intelligent men: "Lawyers are a necessary evil." This is certainly a depressing estimate which the world places upon itself, and goes far to reconcile us to its judgment upon ourselves. It is so bad, so much worse than we are, that, doubtful as may be our morals, we are nevertheless a necessity to it; that without us it would go wholly to the bad. But law in itself is an admitted, positive good; and yet it cannot be administered, and would not long exist, were it not for lawyers born of it. Courts are good, and judges in the main pure,

upright, and incorruptible; and yet they cannot come except from the bar. Does good directly produce evil? Can evil spring directly from good? There are texts of high authority bearing on these questions, which in other language have been asked before.

There is a prevailing impression that, if not the study, yet at the best the practice of the law, has a logical tendency to undermine integrity, and induce the practice of sinister methods: in short, that lawyers are, and are in the way of regarding themselves, as remitted to a lower standard of morality, in the discharge of their official duties, than the rest of the world. Need I assure you that this is utterly erroneous, and without any foundation in fact? There is a certain habit of some of the best members of the bar, and of some of the purest writers upon law, that gives a certain indirect countenance to this charge. They speak and write treatises of "the ethics of the bar," "the morals of the bar," and somewhat as if there might be one code for the world and another for the bar.

Gentlemen, let us have no hesitation over this thing. There can be but one code—one right and one wrong. I pray you make no doubt or mis-

take; don't stop to query and stumble in this prime matter. Honor is honor, and truth is truth, everywhere and under all circumstances; and that which is wrong in the ordinary pursuits of men is wrong at the bar; and that which is right at the bar cannot be wrong anywhere else; and if it shall be found that it is, then it was wrong, and not right, at the bar.

A man who knowingly attempts to mislead court or jury, or who willfully states a falsehood in court, is a knave and a liar, and as such should be branded and avoided. But do not men uncan-  
didly urge doubtful arguments, and contend for untenable propositions on the trial of cases? Undoubtedly at times. Do they not everywhere? Is it peculiar to the bar?

Bear in mind, the contests of lawyers are not *ex parte*. They confront each other in the face of learned and astute courts, and in the presence of the world, where lies and frauds have the least possible chance of success, and where exposure would usually be fatal to a cause.

Do not lawyers sometimes employ fraudulent evidence, rely upon perjury and simulated proofs? No honorable lawyer ever does, with a knowledge of the character of the material. He would no

more use the lies of another than fabricate them himself. His love of truth would forbid, and the danger of exposure would be the same. Such means as come to his hands, without a knowledge of their spurious character, if they are such, he can in good faith make an honest use of.

It is said that lawyers voluntarily engage in the defence of the worst criminals, whom they know to be guilty. We may linger a moment over this. Suppose a man is guilty: shall he be dismissed to punishment without trial? If he is tried, shall he have the aid of counsel? How can he be tried without? Besides, how do you know he is guilty? He may, after all, be innocent. Accused men often are; and a rule that could by possibility work injustice should yield to one that gives reasonable hope of security. And besides, the wisest, most merciful, the oldest of rules, is, that a man is presumed to be innocent until proven to be guilty; and to defend him is but to give effect to this just presumption of the law. The man is to be tried and defended. How shall he be defended: merely *pro forma*, without ability, without care, without earnestness and skill? Without all these his trial is a sham, a fraud upon him, and an outrage upon the law



itself, and upon all sense of justice. Remember, that against him the might and power of the State—of the United States—ranges itself; able and experienced counsel appear to prosecute him; and the court and jury who try him are citizens of the State which prosecutes him. Surely he is enough at disadvantage without being betrayed by his counsel; and against the odds he encounters, he is surely entitled to zeal, learning, ability, and experience; and, though guilty, sacred laws would be violated and the public safety endangered if his guilt was not legally ascertained, and punishment assessed in the spirit of the law.

For me, I know no duty more sacred and solemn than the defense of even the most guilty, by an advocate conscious of our human frailties, before twelve erring mortals, and a court not exempt from human infirmity, and earnestly urging such considerations as come to his hands, that may throw a doubt upon the alleged crime, or that may go in its extenuation. And the stronger the State and public opinion bear him down and corner him, the more zealous and resolute must be his defense.

I utterly repudiate, and as I believe the Amer-

ican bar has repudiated, the atrocious rule of Lord Brougham, and which is said to have controlled the conduct of Phillips, the Irish barrister, not long since, that in the defense of a criminal an advocate should know no man but his client, and nothing but his acquittal; and that, to secure this, he was remitted to the choice of means, unlimited by truth and unknown to honor. Such a rule makes the counsel accessory after the fact. A lie is not a legal means of defense; a fraud can find no place in the armory of defense. The advocate must remember the law and his loyalty to it, and not forget God and truth in the exigencies of any case. And when it is remembered that a lawyer is not at liberty to refuse to defend a man charged with crime, the force of this charge against lawyers, which I have considered, can be appreciated.

It is often urged against us, that we appear indifferently on either side—as often on the wrong as the right—and make the same exertion to enforce the wrong as the right; which is utterly inconsistent with all proper notions of human conduct. This assumes that all cases have a clearly right side, and as obviously a wrong side, which men of ordinary capacity could discern. The world

should be able to comprehend that such cases are very rarely litigated—seldom or never are. Judgment usually goes by default in them. It might also come to know, though I presume it never will, that in a majority of cases no possible question of moral right—a question of right and wrong, as we call it—is involved; while in a great majority of cases, whether the right involved is moral or legal, or both, there is the gravest doubt upon which side it will finally be made to appear.

A man comes to me with a case, and states it as he understands it. I make allowances for the coloring and overstatement and omissions which most men impart to their narrations, and still find he has the seeming right, and commence a suit for him. His adversary goes to another lawyer, and tells his story with the same result, and is advised that the apparent right is with him, and he defends. From that moment we each look for evidence and law to sustain our side, and we come to the trial with the sincerest conviction that we are right, and we try the case under that conviction, sincerely, earnestly, and with what might we have; and the man who is beaten keenly suffers from a sense of the injustice done

his client; and this is true of nearly every litigated case in all the courts.

The first condition of success is, that the advocate should convince himself that he is right; and he must be a poor one indeed if he cannot do that, however he may fare with court and jury. If he cannot, he certainly need not hope to convince anybody else.

This advocacy of opposite sides is not peculiar to the bar. Men dispute propositions out of courts without suffering in the general estimation. Take the reverend clergy, for instance; and upon matters of divine revelation, which we might expect would be tolerably certain, they take opposite sides, as if such a thing could have two; and sometimes, failing to convince, they burn an opponent. Now, we may not doubt their sincerity, however much we may admire their Christianity. We never go to this extreme with advocates, though we sometimes hang their clients.

You see, gentlemen, that whenever we examine for a moment the popular impressions against lawyers, they resolve themselves into popular delusions. I may not pursue this further.

X. The law, rightly studied, is the noblest theme that can command our time or employ our faculties. Its effects upon the mind and soul of the student are at once to exalt and enlarge, whatever the world may say or think. Its practice calls into constant exercise his best qualities of intellect, and familiarizes him with the use only of the most honorable means; while, as a result of his contests in the presence of the world, those conflicts are necessarily of the most honorable and often of the most chivalrous character.

As one consequence, there is almost a total absence of feuds, animosities, and jealousies among the members of the profession; and few tales, slanders, and scandals, concerning its practitioners, find inventors or bearers in the atmosphere of the law.

The rule of absolute integrity is the rule of the average good-class lawyer; and he may be intrusted with the dearest possessions, the most sacred of human confidences, with the certainty that good faith will govern his entire conduct in the discharge of all his duties.

The study and practice of the law enlarges and strengthens all the faculties of the mind, and naturally leads to varied attainments. The con-

stant dealing with the business and affairs of men makes the lawyer an adept and expert in all the varied branches of industry and enterprise. His habit and business of advising in difficult and complex transactions makes him a cautious, safe, and a skillful counselor.

His constant intercourse with men renders him a master of human nature; the workings and weaknesses of the human heart; the play of human passion; and the springs and motives of human conduct. He sees rather the worst of men, and would grow cynical and misanthropic, if he was not constantly surrounded with the illustrations and manifestations of man's better qualities, in the persons of his professional friends.

His habit of investigating everything, and of taking things only on proof, makes him incredulous; and hence he is seldom imposed upon, and is never visionary. His love and veneration for law render him somewhat conservative; while his skill and ability as a public speaker—a real power in a free community—always attract to him the popular admiration, and open to him the highest places his ambition may covet. The successful lawyer unites in his person more of the elements of a popular leader than are usually found

in another; and necessarily the members of the bar, although numerically smaller than any other calling, trade, or profession, can and usually do directly exercise a larger influence among a given people than any other, and by concert could undoubtedly do much to control its affairs and shape its destinies.

And it certainly is no discredit to them, that the aggregate of this power and influence has always been exercised to promote and build up those institutions that advance civilization; extend the field of human effort; encourage popular education; promote science and the arts; purify the morals; extend the franchises of the citizen; protect virtue; and secure religious toleration. The bar has necessarily exercised the whole judicial power of this country. It has furnished the controlling influence in its varied legislation, and contributed out of all proportion to its executive officers. In the main, this influence has been enlightened, liberal, and patriotic; and in no instance has it attempted to advance its own interests, as distinguished from the masses of our people.

This, gentlemen, is a subdued and colorless sketch of the profession you propose to enter, from the modest stand of one of its humble members.

## LECTURE III.

### THE ARGUMENT TO THE JURY.

I. I SHALL on this occasion necessarily refer to some of the same matters, and possibly reproduce some of the things, already presented in my lectures on Public Speaking, and Law Students and Lawyers.\*

In this country we generally do not follow the English usage, in the argument of causes to the jury. There the affirmative opens with a full statement, and an argument of all the evidence to be given in its support. The evidence is then put in, and the negative then opens with a complete reply and a presentation of its side. The evidence is then introduced, and the senior counsel for the negative argues and sums up the whole case, and is replied to by the senior on the other side.

We usually content ourselves with a statement of the case to the jury, to commence with, and re-

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\*This lecture was delivered after those mentioned above and placed here with kindred subjects.



serve all argument until all the evidence is given. The affirmative then opens, is followed by the other side, and is replied to by the affirmative. Both sides may submit the case without an argument, as may either side, whether the other does or not. As a general rule, do not submit your case without comment. Be sure that the jury understand it, so far as they can be made to; and it may be useful to the court also. As often as I have submitted a case without argument, I have had occasion to regret it.

II. Whatever may be vulgarly said or thought of the office and importance of argument, there can be but one opinion among lawyers and enlightened minds. Nothing tends so effectually to a just comprehension and a right understanding of any controverted matter as a thorough discussion of it by men who fully understand it, and who are properly trained for this labor—men who kick and knock it about, and show all sides of it. Of course the respective counsel cannot be supposed to be without ample information upon every part of the case, so far as proof has been produced, and no one can be so well prepared to hold up and exhibit the questions involved in every light re-

flected from the evidence; and when this is fairly done on both sides, most important and valuable aid has been given to court and jury. They have heard all the evidence, and finally all that clear-headed men could say, upon both sides, in the application of that evidence, and the diverse conclusions to which, from the same evidence, they have come. The jury are to say which shall prevail.

III. As I have elsewhere said, it is the first condition of an effective advocacy that the counsel should believe that he is right. It must be a poor advocate who does not convince himself; and if he fails in this important requisite, he can hardly hope to convince others, who are indifferent or biased against him. All this matter, in its moral and mental bearings, I fully presented in the lecture on Law Students and Lawyers. Any man with warmth enough to be an advocate becomes so thoroughly imbued with his case, so earnest in his faith, that, long before he reaches the final argument, he has lost sight of every consideration, except how best to present it. Money, fees, labor, all pass out of his mind and memory. It is in this mental condition that he works through a trial.

The advocate is to remember that everything in the world is subordinate to the case. Of course I mean everything not inconsistent with truth, honor, manhood, justice, and a decent regard for the feelings of others. The advocate is not to think of himself or his reputation. He is of no consequence, except as he can fairly advance his case; and he must consider how he can best do that; and what, on the whole, seems best for that purpose he must say; and that which will not, he must refrain from, however tempting. This is his personal relation to his case. His zeal, however, must be according to knowledge. He takes up his client's cause, but his client's feelings, passions, enmities, dislikes, and prejudices are never to be his; for to just the extent that he becomes saturated with these and becomes his client, to that extent he loses his capacity to judge coolly, speak prudently, and act wisely. Some men are so constituted that they at once become possessed of their clients, (and they had as well be possessed of the devil,) who, in their estimation, are the only honest men in the world, except the witnesses who swear for them, while their opponents are hopeless villains, and their witnesses perjured scoundrels. Such men are often good

lawyers and advocates, but it is in spite of these qualities.

You are then to argue the cause, not for your own benefit or fame, but solely to convince the jury, and for no other purpose in the world; and as the minds of men work much alike, if you will remember the processes of your own, making allowance for the difference of your positions, you may get some hints as to the best method of dealing with the minds of the jury.

IV. You will do well to reflect somewhat upon the mental character of the men you are to address. They are "the country," to whom all issues of fact are specially referred; numerous enough and of sufficient variety to represent the average common mind; and are supposed to embody the unbiased public opinion in their verdicts. Juries are an awkward, cumbrous, and unintellectual means for the ascertainment of facts; as much so as could be invented. They are the only purely democratic element of our Government. The man is a juror because he is a citizen; and the way is level and straight from his home to the jury box. He comes with his feelings, passions, prejudices, ignorance, experience, and knowledge, just as he

is, and sits with them all as a part of his citizen's garb. You have the common man to deal with. You are to approach twelve of these at one time, openly, publicly, in the presence of the court, and in the face of the enemy; and if you can, gain their attention, interest them in your cause, secure their confidence and sympathy, and convince their judgments; or at any rate get their verdict.

Now, you want to be able to approach them at once, and step into the circle of their thought, or bring them into yours, which is better. Long before you come to address them, they will have some impression of you personally, and of your side of the case. They will have read you pretty well, whatever you may have done. You ought to be able to come to them with a reputation for candor and fair dealing. Your manner and course of management should be such, that they will not be armed against you, or in mental hostility to you; and whatever there is of unpopularity or prejudice about you, will be a thing to be overcome or put out of sight in some way; for otherwise it will be a weight to carry. So any defect of person, manner, dress, or oddity may work in the same way.

Some men can at once attract and win, while

others repel ; and no one can quite tell why. One thing is obvious: a man must rise and stand on exactly the same level occupied by the jury. It will never do to stand above, and naturally look and shoot over, or have to depress the muzzle of your piece to reach them ; nor must the mistake of appearing below them be made: though for a rising man it will be easier to get up than for a lofty one to come down. The common level, on which all can meet and recognize; the frank, natural, unassuming, unconstrained, pleasant, respectful way in which gentlemen meet each other ; where both sides understand that important matters are to be disposed of, in which all are interested, is your ground. Levity is indecent; awful solemnity out of place ; pomp and grandeur of manner are obsolete. You must be yourself, if you can be—if that self is worth being ; if not, you should be out of court. Of course you will for a long time, and after many arguments, be diffident and nervous. Do we ever get over it, so that it never returns? Now, if you have about you, in your dress, anything that you don't like, that you don't feel well in, don't wear that on the day of argument. Of course you will not appear in full dress on ordinary occasions ; but

you must feel yourself; and if dress helps you, dress. I knew a gentlemen who once sent sixty miles for a favorite pair of boots, in which to make his final argument in a great case.

You are not only to rise to the level of the jury, but you must keep constantly in mind the mental level of that body. It is the average common mind of men, unaccustomed to sustain mental labor, and who weary of it as soon as would an office man of carrying brick up a three-story building. Especially remember this: the mind is unaccustomed to the labor, and incapable of it, if long continued. The twelve can no more follow a long, close, nice, analytical discussion upon the respective sides of a complex proposition than they can fly; nor do juries ever arrive at verdicts in that way. We are often astonished by the reasons given by courts for conclusions of facts, and of law also; and few juries could give the intellectual processes which conducted to their conclusions, if the intellect had anything to do with it. They are the country; an epitomized mass-meeting of citizens; they are moved in the same way; follow the same mode of thinking, or rather of not thinking; and are almost always governed by their impressions. I wonder if the

clergy think of these things? The issue is a single material point, and the jury will be more strongly impressed in favor of one side than of the other. What have you to present in the way of argument, simple, strong, clear, and forcible, that they can understand, and that will impress them indelibly in your favor?

You will see that your points must be few and strongly marked—the fewer the better—not more than one or two—and these are not to be weakened or obscured by making minor and less important points. Seize one or two, and remember that the jury have heard the evidence but once, have no notes of it, and it may be conflicting. Seize one or two points, clear them from doubt and obscurity, present and re-present them in every light which the evidence will permit, and be certain that you are understood. Remember that the mental grasp of the jury is weak and lazy, and easily overcome; and you must not overload and overwhelm them, or confuse and bewilder them, unless in that lies your hope; and so you must put up your goods in a single parcel, if possible, and so fix it in the minds and memories of your hearers, that they cannot lose or have it wrested from them.



Cutting or shooting it into them, is the only safe way.

V. Don't entertain the popular idea of analyzing your jury, and of saying one thing to one man, making a point for him, and another thing to the next, and so on through, until you have hooked and strung them all, after the marvelous fashion of the marvelous Choate. Nobody else ever did such a thing, or if they did, it will never be done again. Of course one juror is impressed by one thing, and another by another; but the advocate can seldom tell where or whom he hits, or how; and the kind of eclecticism mentioned, if attempted, while it might convince the one or some other one, might repel the other eleven.

Among twelve there will seldom be more than two or three, often not more than one or two, (and sometimes none,) active and intelligent minds; and while I would never undertake to analyze the twelve, the advocate would be very careless if he failed to recognize the leading minds by the time he comes to address the jury. Now, my struggle would be for the souls and consciences of these men, with little care for the average blockhead, so that I did not offend him. It is

amazing how few do the thinking in this human world; and one clear head and strong will controls a hundred ordinary men. Indeed, this will force is a wonderful power in the hands of the advocate. Men carry doubtful cases sometimes because they will, and men yield rather than arm and defend themselves. I have seen courts shaken and driven from their judgments by a strong, controlling will. Capture and hold, if you can, the governing mind, and it will take care of the weaklings and nobodies.

VI. You will keep in mind that you can come to but one conclusion: that the merits of the case are with you, and that the verdict must be for your client, unless, indeed, you are prepared to admit that the case is so hopeless that it will not hold you up in an argument; and that case must be hopeless, when an ingenious man can find nothing to say on its poorer side. I remind you of this only for the purpose of saying, that while you are bound to one result, you must reach it solely by means of the evidence admitted by the court. You can use nothing but the evidence; and if that cannot, by skillful handling, adjusting, and arranging, be made to carry out that

result, you should suffer a defeat, and probably will.

All you can do is to make the best possible use of the evidence. Your duty is plain and obvious: you are to argue. You cannot, by bald assertion, supply a missing link. You may show that, in the nature of things, that link must exist, though absent; but you are to argue from what you have, scant though it is, and not from what you have not, important though it may be. Whatever your evidence implies it proves, and you may have the benefit of it; and it is often astonishing how far strong hands will carry and be carried by a little evidence. While you cannot supply evidence, so you must not mistake it. Not even a temporary advantage could be gained, while certain exposure and loss would follow.

An advocate has no more authority or warrant for an untruthful statement to a jury than to any other parties, and is under the same rule of rigid morality in dealing with them as with the rest of the world; and whoever deems himself remitted to a lower or other standard in the practice of the law from that which should govern the rest of the world, has utterly misunderstood the spirit of his profession, and the standard it sets

up for him; and for him no high degree of success is within reach. I must repeat myself on this point. I have observed, especially in our profession, that a healthy mental growth is seldom found where there is a lack of healthy moral development. The man may become skillful and adroit, but he will seldom become a distinguished lawyer, and more rarely still a great advocate. A man's moral make-up is soon comprehended; and when a jury know that there stands before them a thoroughly reliable, honest-minded, honest-hearted man, they give themselves into his hands with great confidence, while the dishonest never wins full assent. If inclined to believe him, a jury fear a snare, and stand aloof. Of all the callings of men, that of the lawyer exacts the most rigid uprightness; and high reputation will attend none but the upright.

Men talk and write about legal ethics, the morality of the bar, and all that sort of insufferable stuff. He who so talks compromises himself; and whoever contends for any but the common rule of honesty and truth, recognized the world over, makes an opening for a dangerous and most damaging inference and suspicion. You are, then, to deal fairly and honestly with a jury; and there

can be no excuse for attempting to deceive them, except that you are yourself deceived. Nor is it in good taste or ever useful to declare your own personal belief in the truth or correctness of your position. Show a jury the open, fair road to conviction, by exhibiting the evidence in its most favorable light. Open and light up the way to the wished-for conclusion, but don't stand outside and solemnly asseverate that there is a way, and that they ought to find that they are already in it, because you say that you believe that the way is open and straight to the conclusion.

VII. Whatever you may feel called upon to do or warranted in attempting, never, in cold blood, deliberately determine to be eloquent. Real eloquence is rare; few occasions arise that produce it; and very few men are equal to those rare occasions. Indeed, it is difficult to say what it is or in what it consists. The young advocate dreams of it, and a few realize the dream. Be earnest, sincere, and warm; speak with feeling, force, and energy; but don't try to be eloquent. There is one other thing more fatal than eloquence, and that is pathos. Of all the barbarities practiced by man on man, the dry, creaking, laborious at-

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tempt to produce tears is the cruelest—"boring for water," as somebody called one of these droughty efforts. Be funny—be anything but moist.

Sarcasm and invective may sometimes, when sparingly used, be not without effect; but don't fall into the common error of mistaking abuse for sarcasm, or coarseness for strength. Men sometimes affect wit and humor, and barely succeed in being low and vulgar.

VIII. Eschew formal openings. If you are not quite sure of yourself, fix well in your mind a few modest, common-place opening passages, that will occupy you until you are sure that you are on your feet, and before the court and jury—something pertinent and modest. Your voice may sound strange to you at the first, but you will recover it as well as your other self. All the bar and the court will sympathize with you. Your opponent would be pained by your failure; but you cannot fail if you understand your case, and know well what you want to say, and go about it in a direct and manly way. Study the case, but don't study a grand peroration; or if you have, omit it, and merely stop when done; which after all is no easy thing to do.

Explain the nature of the issue, what each side of you must do, and then proceed to take up and apply the evidence to each point, and all of it, and be sure and make yourself understood.

If you have occasion to cite books and cases, make yourself as familiar with them as possible in advance. They are always heavy and awkward to a young advocate, and when you can, master them—especially the cases—beforehand. Don't content yourself with merely marking a passage or two and reading mechanically. Explain the case with a clear statement of the facts, so as to show how the points arose. Nothing is so admirable as the easy, absolutely clear, and distinct statement of facts, whether in your own case or of those brought to sustain it. Never take into court a book or case merely because it in some way treats of analogous matter; but be sure that the text supports you, and the case is in point. First, be sure and master your own case, and then understand and master your authorities; and remember that these are for the court. Every case will naturally fall into some methodical order. Pursue this, and, when fairly through, close up your argument. Every moment beyond adds no strength.

IX. In the matter of advocacy, like other things connected with the law, eminence is usually only attained by labor, study, practice, and unremitting effort. You may be a genius, whatever that is, and may really have fine parts, calculated, when exercised and developed, to conduct you to distinction; but it will be fatal to trust to them. Thank God for them, and gratefully labor and study to make the most of them. Remember that no genius was ever so generous and happy that it could alone conduct to eminence.

The power and capacity of effective speech can only be acquired—for it is an acquirement—by industry, study, and much practice.

In the first place, the man must, under all conditions, have a speech in him. You cannot by any means get out of a man what is not in him. You cannot always get what is in him. What is not must be looked for elsewhere. Mere words, sounding and polished rhetoric, will not do: there must be some sound meaty matter, wholesome and nutritious. Shams and sounding-boards will not last an hour in the rude forum of a *nisi prius* court; and this matter you must be prepared to furnish in some quantity and kind. Don't be afraid that it will not be appreciated. It cer-



tainly will be. Men forced to act in cases of difficulty always eagerly and gratefully listen to every word that helps them on and out; and such words you must be prepared to utter; and everybody fully estimates and deals kindly with what falls from the young advocate.

X. As for the manner of utterance—the mere mode—cultivate a natural, easy, graceful, finished style. Remember that whatever is important enough for you to say, is of sufficient importance to be well said. Have nothing florid, finical, or mouthing; but simple, manly, proper, finished, and elegant, if it may be. Don't, for heaven's sake, fall into the careless, slovenly, slipshod way and manner of speech so prevalent in our courts. No matter in what court you appear, or what may be the habit of its practitioners, you may not hope to reform it, but you can avoid falling into it. You are a gentleman, a lawyer, and an advocate, and each of these is inconsistent with the manners and address of the legal loafers who disfigure our courts. We mean to turn out the possibilities of good lawyers and advocates. We should blush if any but thorough gentlemen went from us.

You are to convince, if possible. To do that, you must be understood; and that you may be understood, use none but the plainest, simplest, and most common words. Indeed, among intelligent people, every child at ten has acquired language that will be the staple of your speech. The words used longest and oftenest will be to you the handiest, most forcible, and useful. Remember that they are not thought or ideas, but the bearers of your thought to others; and they must deliver them into the comprehension and understanding of your hearers. Never use a word until you are certain of its meaning, and until you are also familiar with its sound and pronunciation; and avoid scraps of law Latin and law French, or poetry or Scripture.

I would by no means have you neglect the study and acquisition of language. On the contrary, I would master all English words, and be familiar with all the terms of art and science. Surround yourself with language, search out its sources, laws, and relations, so that you may never feel its want, and can command its strength.

XI. Let me suggest a useful exercise, and one that will employ every leisure hour or odd mo-

ment. Think always in words; compel your silent thoughts to clothe themselves in the forms of language. I know nothing that more rapidly helps you to the mastery of language and expression.

I may confess to you, perhaps, a practice of my own, in all my young law student and young lawyer days, with what advantage I know not: and that was the constant creation and delivery of imaginary arguments to imaginary juries, in unreal courts, in extemporized cases, upon supposed evidence.

My mind would construct cases out of the most ordinary incidents of every day life, and glean up evidences from all possible sources; and I would prosecute and defend, sue and be sued, and always hastened my cases to an issue, trial, and argument. I used to have some standing cases, in which I had a great many new trials, with all manner of inconsequent verdicts and reversals of judgments.

This habit did not arise from any bias of my mind, or inclination to judicial studies and labors, for I had none; but they were among the spontaneous expedients of an active and imaginative mind. I don't know as the results were of the

least value, and I only state this practice as a suggestion to you. I don't know as this was ever practiced by any other man, but think that it might have been attended with some advantage in my own case.

XII. Whether there is anything in our climate or peculiar to our continent, to our habits of life and mode of thought, it is indisputable that we have a wonderful facility for public speaking—to speak while standing; and few Americans born but can acquire great fluency in the use of words. Persistent effort and constant practice, in almost every instance where there is no physical defect, is certain to develop a ready use of words. This, however important an accomplishment it may be and most useful it is, yet, standing alone, can achieve nothing. Words alone are nothing. It is only where they are the bearers of thought, freighted and rich with sense and pertinent matter—when they go, like brown bees, burdened with the gatherings of labor—that they are listened to, treasured, and remembered; and, when thus employed, they tell upon the position of an opponent like cannon-shot upon a beleaguered fortress. So that, after all, for the rough and ready work of

the *nisi prius* advocate, the mind should be well stored with matter, which will get itself uttered somehow. Have the best possible matter that the field or mine of your case permits. Enrich it, if you can, from other sources of thought and experience; embellish it sparingly, and with severe taste, and deliver it as effectively as you can, naturally and earnestly, and in the order that best commends your case to favorable consideration.

XIII. Of the mental qualities necessary to successful advocacy, the most important must be the power to clearly and discriminatingly understand the exact elements involved in a given controversy—to comprehend and discriminate. The thing must be understood and separated from every other thing, while at the same time its relations to other things must be discovered, and as clearly traced out and understood. Some minds, of a metaphysical cast, have an especial aptitude for correctly apprehending and drawing the boundary line around the most abstract ideas; and the danger to these minds is, they are apt to sight too fine, and draw too close and nice distinctions for the average minds and com-

comprehensions of men in practical life. One thing is absolutely certain: no man can convey to another a clear and accurate idea and understanding of what he does not himself fully comprehend and understand; and the clearer he is it, the more readily can he bring it within the clear vision of others. The faculty of clear apprehension must generally be cultivated, while the matters immediately involved must be specially and thoroughly understood. This is a first condition of useful advocacy. The next is the faculty of clearly stating to others—of conveying and delivering into their minds—the matters and things which so clearly and distinctly rest upon the mind of the advocate. A vast deal is involved in this. The ideas must stand in logical order in the speaker's mind, and, without jumble or confusion, should in this order be conveyed to others without breakage. This requires the freest and readiest connection between the process of thought and the faculty of utterance and speech. These thoughts, ideas, or understandings must be made to take the form of clear, happy, and forcible expression in speech, which involves, of course, the power and faculty of clothing ideas in words, and giving them utterance.

As to this latter, you have enjoyed the great advantage of the discipline and training, as well as the practical suggestions, of your professor,\* who has had that matter specially in hand. I may be permitted to say, that these words are to be distinctly pronounced, and, in a mere statement of the case, deliberately uttered. As no word will be in excess, so each word must have its weight. Nothing is so effective and advantageous as a clear, logical statement of facts; nor is there a better test of a good advocate.

Of this statement of facts, such as are not disputed, if any, should be enumerated as admitted; and the advocate then proceeds to take up, in his own order and in his own way, such as he claims are proven by the evidence. Of course I need not say that all and every word of evidence in the case, no matter from what source derived, or on which side produced, is to be analyzed, explained, grouped, and applied for and against each fact. The whole, claimed to be admitted and established, should then be grouped and arranged, and regrouped and rearranged, in all the forms and methods which the advocate deems necessary

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\* Professor Langston.

for the most favorable consideration of his side. This involves the whole matter of argument proper, as well the opening as the reply to any argument of the other side.

I have already spoken of will force as an important element of advocacy, and observe further, that the manner of the advocate should always be that of unhesitating confidence in every position he takes, and conclusion to which he arrives. Nothing could be more damaging than a doubting, hesitating, feeble, or vacillating manner. Let the advocate, with a modest, but decided, confident, firm manner, plant his foot upon every position he proposes to maintain, and stand there with the fixed confidence and determination of a man who will maintain it; and let him approach the positions of his adversary without arrogance or swagger, but with his forces well in hand—with a cool, intrepid manner—and carry them by storm, if necessary: and juries are sometimes carried in the same way. But always distinguish between mere noise and actual manful force. The advocate must also have the power of condensing and concentrating himself on one side of a case, and to see the other only to see a way of demolishing it. This is one especial power of the advocate.



XIV. Great and constant practice is essential to a successful speaker of any sort, and all practice is, to a certain extent, useful to the beginner. But the random declamatory, story-telling, balderdash way of political speaking, as is much practiced, cannot be long pursued without being hurtful and destructive to the severe and logical method of presenting matter essential to the advocate. He rises with an inexorable point which he must make, and holds in hand the exact and only means that he can employ. His structure must bear a certain height and solidity, and he can employ only certain material; and, like the Hebrews in Egypt, he may be obliged to gather straw for his brick in waste places.

The political orator rises with a subject as limitless as the out-door horizon; may speak for some definite object or none; and draw his material from any source. And whoever indulges in this discursive, miscellaneous style, dissipates and finally loses his faculty of condensing his thought and speech in the effective manner which courts will alone tolerate. And this is the reason why so many distinguished advocates make indifferent parliamentary and congressional speeches. They rise in an unaccustomed forum, with no certain,

definite issue to be maintained, and with no specified, marked, weighed, and counted material, which can alone be used. The walls of the chamber vanish, and imponderable atoms fill the air, which they cannot clutch and condense into logical formulas; and they have not the faculty "to float in the amplitude of nature," or bombast, which is often the element and aliment of the stump speaker. And hence, naturally enough, Erskine, the over-estimated English advocate, was the under-estimated speaker in Parliament, while Curran, the ardent, passionate, illogical, Irish declaimer, succeeded in the Irish House of Commons quite as well as did Grattan.

XV. It is, perhaps, singular that, while oratory ranks, with the beauty of woman and with gold, as one of the greatest powers to move, seduce, and control men, and is sometimes more powerful than both, and although we are a nation of public speakers, yet with us the arts of oratory are rarely or never cultivated; and this seems to be so in all modern countries. The art of oratory may be classed with the lost arts. I cannot here inquire into the causes that have contributed to this, but we have hardly in this generation a

speaker who can be called an orator in the good sense of the word. Speakers we have—strong, logical, powerful, passionate, vehement, overmastering, and, at times, irresistible; but orators, perhaps none.

The prevailing and growing habit of writing and reading essays called sermons precludes the possibility of even moderately effective efforts in the pulpit. Neither the rich nor poor can be said to have the gospel, or anything else, *preached* to them now, as a rule.

One seldom hears effective speaking in the House of Representatives. The crowd and competition for the floor and the hour rule compel members to write out their speeches, and trust to some odd time, in Committee of the whole House on the state of the Union, long after all interest in their subject has passed, and in the absence of all but a dozen members, companions in misfortune, when they may read and print, and mutually subscribe for and frank their speeches to the world and posterity. When one is fortunate enough to get the floor on a field day, his very effort to make himself heard above the clamor and din compels him to use his whole physical force, which renders intellectual labor feeble or im-

ossible. He rises at one of the remote desks, with knots and separate crowds, and little half independent mobs, and in directions between him and the Speaker, with clamor and confusion of members about him and in cloak-rooms behind him, and pitches his voice so that his words mayhap go over the intervening noisy throngs, and drop on the desk like small shells among the House reporters. He is speaking to the country, to posterity—God help him! Of all the places on this earth, and of all bodies called deliberative, I declare the American House of Representatives the hardest and most trying to speak in; and many able and accomplished men never try it but once, and many not at all.

The Senate is smaller, more quiet and select, and a less ability wins a reputation in that body. One now seldom hears good speaking in the Supreme Court of the United States. Nothing which realizes the traditions of Webster, Wirt, Pinkney, and Emmett. Indeed, the manner of dealing with cases in that august forum precludes and discourages the higher efforts of speaking. All is humdrum, dry, and matter of fact; and it is not often that the popular advocates, trained in the trial of cases before juries, appear in that court at

all, and when they do, a *rigor mortis* supervenes. I am most decidedly of opinion, that the best speaking in our country is at the bar of the *nisi prius* courts—the best, in all respects, estimated by any standard.

XVI. As I may have before remarked for your encouragement, it does not take the greatest intellect to make the greatest lawyer. Good lawyers are common, and the bar, in learning and ability, is undoubtedly in advance of any former day. Good advocates, though by no means scarce, are more rare than good lawyers. A man can be a good lawyer and a very indifferent advocate; but there never was a good advocate who was not a good lawyer. Something more and a little higher comes in to fit up the advocate, not essential to the mere lawyer.

Among all the achievements of the human intellect, the rarest on this earth has ever been and always will be the first places in oratory. Indeed, while human history is studded with great commanders, great poets, painters, sculptors, and philosophers, antiquity gives us but two orators; and how many have modern times produced?

You may not expect to reach the first eminence,

but you may all hopefully struggle to become in time good advocates, which is a high distinction.

In many of our large cities the work of lawyers has undergone the division of labor that attends the later stages in all branches of human effort and enterprise, and many, distinguished in special branches, never appear in court to argue cases while the advocate is constantly in court.

Of course every student of the law who intends to pursue it as a profession—and no others should study it—is ambitious to become an advocate, and certainly no more worthy object of a manly ambition exists.

There is no human knowledge that may not aid, and no human faculty that will not contribute to the success of the advocate. His labor, on great occasions, is one in which the highest elements of the human intellect and soul may, when called to their greatest exertion, find the amplest field for their united display: one in which the highest possible human achievement may be realized.

A great advocate, on a great occasion, at his best and highest, may for his hour stand on the highest pinnacle of his race. The highest courts bow with submissive awe before him, and reverently profit by his conclusions. These occasions

and achievements may not come to us, but our profession leads us along the way that conducts to them.

No rules can be laid down which, however faithfully followed, will make a first-class advocate. The present manner of conducting business—modes of thought and temper of our courts—does not lead to, does not demand, the cultivation of the highest order of speaking. The tendency is to the humdrum and matter of fact—a business style—and an absence of the finished and elaborate; and I fear that labored dullness sometimes passes for learning, and grave and solemn commonplace for force, even in the courts.

All can reach a fair average of business advocacy. Beyond that, much certainly depends upon mental make-up, ardor, and warmth of temperament, and the play and power of the emotional nature. A man who sincerely believes that he is right, who has deep and earnest convictions, and who is so accustomed to speaking that he thinks quickest and best on his feet, (legs, as the English say,) will always be impressive; and if he has a quick, kindling, sympathetic nature, he will often rise to heights of real power, and may sometimes, perhaps, touch the realm of true eloquence.

## LECTURE IV.

### LAST WORDS—ADVISORY AND SUGGESTIVE.

As we are near the end of our second academic year, and some of you are about to go out and away from us forever, I take this opportunity to say to the department some words of advice and admonition, and which, though I trust will be profitable to all, will be to the graduating class last words, and a final adieu from this chair. The past has been summed up and reviewed, and a few sober words for the future alone remain to be spoken. They will be entirely practical.

Upon admission to the bar, no long lapse of idleness should intervene before entering upon, or holding yourselves out to enter upon, the active labors of the profession, if you ever seriously intend to practice law.

Where shall you locate? Shall you form a partnership? As to this last, the question may be narrowed as to many of you, on account of



race. It is not often that a very eligible opening is found to form a connection with the most desirable partners. Men of standing and position at the bar, if they desire it, have partners; and if not, they usually prefer full-grown lawyers to young students. Occasionally such opportunities present themselves, and are gladly accepted. The advantages are obvious. You secure an establishment at once—an office, library, and business—with a chance to acquire a knowledge of practice, and all the various modes and forms of business, with a freedom from the danger of blunders, and an apparently open way to active and successful professional labor.

The disadvantages are less apparent, but very real. You stand a good chance of always filling, or at least of occupying, a subordinate position. Suppose you form a connection with a man in full practice. For a long time you will be a mere office-boy and messenger. The inquiry will always be for the senior, and at the most you will at first answer that he is out, or refer the caller to him. If you are content to do this, and only copy and write what you are set to do, the danger is that you will never grow to anything better. You will get in the habit of being passed by, until

our busy senior may conclude that you never can do anything. All that he really can do for you is to hold you out as his partner, and occasionally advise and put special things in your hands to do. When left at the office alone, you can not only answer questions, but inform callers that you are a partner, and suggest that the business of the visitor can possibly be advanced by you. This will often lead to a conversation, not only as to what is the matter in hand, which will often prove something that you can do, or at least understand, so that you will perhaps make a useful acquaintance, make yourself useful to your senior, and necessarily to yourself. No opportunity should be neglected to pick up the odds and ends of business, and of thoroughly understanding everything, not as a clerk, but a principal. The chief danger is the habit of depending; of leaning and relying upon another; of always going in leading-strings, and being supported, until you lose the confidence and ability to go alone. Of all the discouraging and belittling influences that one can fall under, this might be the most fatal. No blight is so enfeebling as that of the constant shadow of a strong, powerful senior, to him who constantly walks in it; and

the abler and more distinguished he is—and hence the more desirable as a partner—the more fatal will be his influence; and the junior of such a man bids fair to always remain a junior. I have known many instances. He is the errand boy; carries the papers and books; looks up cases to order; and occasionally skirmishes in the opening battle of a trial, and disappears. If a case is called up in court in the absence of the senior, his dismay is hopeless and helpless. It takes a good deal of native strength and courage to grow up strong and healthy under such overwhelming association. I have known instances, but they are rare. I would prefer as a partner, as indeed for most professional services, a rising man, who was yet working for reputation, and full of sympathy, ambition, and unused-up energy.

Of all associates, as partners or otherwise, the most to be dreaded and avoided, for all purposes, are the often numerous swarm of drowsy, droning, superannuated, broken, lazy, useless legal loafers, who hang about court-houses, talking about and getting interested in other men's cases, and who crowd about a trial table, and pick up and read the papers, and make suggestions and themselves unendurable, and who have no busi-

ness anywhere, and are idlers and loungers everywhere. These shun and avoid, as you would war, pestilence, and famine. They are at their best good for nothing under any circumstances.

Two patient, industrious, and ambitious young men, fresh at the bar, may often with advantage commence together. They mutually encourage, strengthen, and sustain each other through the long, long interval between the time of dawn and the hour when the sun does really rise with hope and strength and life in his beams; and when a case comes, as it certainly will, the two together will not often be too much for one side of it.

One other thing, most important: rely on yourselves. Go at once to your books, and learn from them exactly what you want to know about whatever comes up, unless it is a question of local practice. Your law will be good, and do you good all your days. Let this be your rule. You may borrow a book, may inquire about a case; but never be seen running about begging crumbs and broken bits of law here and there. You will shrivel and perish on such food. I would not make such law; and was I a client, I would never make law from any counsel in the street.

But where shall you commence? This is a grave point to determine.

As to the place, one thing is certain: it must be where there already is, or quite certainly will be, law business. I have known a good many young men to spend a long time, and go a long way, to find "an opening"—some hungry vacancy, yearning for a young lawyer to fill it. Openings do not exist. The youth must make one for himself. His search for one will be an idle quest: usually a pursuit of knowledge under difficulties. I should be very reluctant to locate in a town not a county seat or shire town. The inconvenience alone would determine me, if I wanted to practice in the courts.

Would I recommend a large or a small town? I should not expect much from a very small, old town. If it was new and thrifty, and with a possible future, the objection would be less. One can, undoubtedly, sooner get a start in a small place; but if he hoped for growth and distinction, he would be obliged to move; and a man can't move many times. A small town cannot do much for a young man. He soon gets his growth there, if he grows at all. Courts sit more seldom, have shorter terms, fewer cases, and of little import-

ance. Few lawyers, and of little prominence, frequent the courts. A young man needs to be in an atmosphere of law, and constantly in the courts, and to associate with the best men of his profession, and where there are books and cases and business. Competition, sharp, constant, and spirited rivalries, which keep a man always on his feet and at his best, are the conditions under which good lawyers are produced. They cannot be made: they must develop and grow; and mental activity, industry, and time are requisite. It requires courage to attack the world alone, in a great city, with only one's unknown name on a tin card of four by twelve inches. Who will ever see or heed it? There is a popular delusion that, in a large town, innumerable strangers, with important cases and large retainers, are constantly rushing around and into the first law office that they can find, and who employ the first lawyer they meet. There is no such thing. A man who wants a lawyer, unless he knows one, always inquires of somebody whom to employ; and the chances of fishing up rash strangers are of the smallest. The chances to marry an heiress are better. I am decidedly of opinion that, under all circumstances, a large and flour-

ishing town should generally be selected to begin in. The new towns of the West are thought to be eligible to start in, although this consideration has filled the West with a surplus of young and ambitious lawyers; yet, after all, business channels are less settled there, and men commence on terms more nearly equal. Wherever you go you will find all the cases in the hands of somebody. Everything there is to do anywhere is already taken up and absorbed; and the holders of it will not entertain a proposition to hand it or any part of it over to you. Nor will an increase of lawyers increase the cases; nor do lawyers make business, nor can they; nor do or can they have any motive in the world, as we practice law, to prolong litigation, and delay the trial of cases. You must, then, somewhere enter upon an already occupied field, and create another center, and induce business to flow to it. Understand and accept the conditions. They are inevitable.

You must have an office, and may not be able to have a very large or elegant one; nor will you require such. It may be small and plain, and not in the most desirable place; but it can be kept neat, cleanly, and must not become a loung-

ing place, where idle young men congregate to smoke, spit, and talk foolishly of women.

Have as many of the newest text-books as your means will allow, and reports, if you can. Don't have much uninvested money. You won't. Some books, biographical and other, more or less connected with your profession: and you are then to wait for business. When one has put the last of his few things in order, and he has nothing more to do but to wait, with nothing in particular that he can do, and is alone, he may be excused if he feels a little heart sinking, and is somewhat nervous and anxious.

The instances in England and the United States together, where a young man has, by some accident, been early called into an important case, and has at once rushed into a practice, are so few and apochryphal, that they cannot even arouse the imagination of the most sanguine. Nothing of the kind has ever fallen under the observation of any of the men of our time, and will happen to none of you; nor need you wait for a great case and a great opportunity. If you do, you will be unequal to them if they do come. Be at your office during the whole of business hours, or in the court room, where cases are being



tried. Your mornings and evenings will be enough for society and exercise. What shall you do? Read. Read your law books; draw pleadings; read Shakspeare; the laws of Moses, the poems of the Old Testament; the lives of the Lord Chancellors; newspapers; the reviews—anything but wasting time, especially in lounging about drinking places and billiard-rooms.

Of course it will occur to all as advantageous to make as many acquaintances as possible, and among business people. Beyond that, I know of no way that a lawyer can recommend or make himself known, save by doing everything well. I don't object to his advertising; and he may get himself noticed in a newspaper for aught that I know, and perhaps may solicit collections: but I cannot understand how a man can hawk himself about like a patent-medicine man, nor do I think he would get himself employed if he did. That is not the usage of the bar. Lawyers, like women, wait to be asked. I should unhesitatingly go before the magistrates' courts and into the police courts, with or without compensation, and I should certainly take cases in the higher criminal courts; but there is an awful odor about the prisons, which

I would not like to have about my garments. The smell of a jail is sometimes fatal.

To commence with, you will not hesitate to appear in the inferior civil courts. The cases may be trivial, and the courts of trivial merit. But you will remember, that there may be as much and the same law involved in the adjudication of five as of five thousand dollars; and that every court, clothed with jurisdiction, has, at least in legal contemplation, a certain dignity, and is entitled to respect from that consideration. No matter how trifling the case may be in its cash estimate, it will be important to the suitors; and, if you engage in it, it will be important enough for you to examine and prepare with care, and try with your best skill and judgment. Make it a rule, to which no exceptions can exist, to do your best in everything you undertake. Always be at and do your best, and let each thing be done better than the last. This rule will insure rapid improvement.

Approach the inferior magistrates with the respect due to the ministers of the law, however they may maladminister it, and treat with respect and courtesy all whom you meet before such courts. You cannot afford to have altercations

with them, and you can by no possibility become a blackguard. Any advantages you might gain in such contests would rank among your saddest defeats.

In the higher courts your bearing to the bench is always to be that of courteous, deferential respect, the manner of the high-bred gentleman in the presence of a tribunal entitled to his respect and confidence: always remembering, however, that in your own proper sphere your rights are equal to those of the court, and that your only superior is the law; and at all hazards you are bound to see to it, that not a fraction of law is violated in your person. Contests with courts are to be deprecated and avoided; but whoever, for lack of courage and firmness, fails to vindicate the law, is, if possible, more reprehensible than he who sacrifices his client's rights through ignorance. A man may find an excuse for not knowing all the law, but there can be none for his not being always a man.

Your intercourse with your associates of the bar, especially when opposed to you in trials, must be that which characterizes the relations of gentlemen everywhere. You are at war, to be sure, but war has its rules, and they are those of

a chivalrous courtesy. Don't appear to fall into the delusion that your opponent, his clients, and witnesses, are painims and caitiffs all, and that they are all in conspiracy to cheat and defraud you, by perjury and chicanery, and with whom justice forbids you to be on terms of Christian intercourse. Do try to think it is possible that they may say and do several things not prompted by malice nor by the instigation of the devil.

It is amusing, and at times a little annoying, to encounter the fierce, brusque, young lawyer, charged to the brim with a first case, who honestly believes that his client is the victim of your diabolical machinations, and that he must strip and lay your villainy bare, and deal with you as an outlaw, to be put to a speedy and violent death, you and your whole gang! It requires some coolness and no little patience to deal with him; but one can, and it is often good practice. Now, you are to try your case, but not the patience of the court and of your opponent. Observe towards him a careful courtesy, and treat his client and witnesses with respect; they are usually entitled to it, and are all possible friends and clients.

Never, under any circumstances, make an imputation upon the integrity of counsel opposed to

you, and don't have a suspicion of it, if you can avoid it—and I will not say to you that you cannot under any circumstances—nor for the fraction of a moment submit to such an imputation upon your own. If a man makes such, at your expense, you must take care that he does not repeat it, and in a way that others will be interested in treating you with respect. There are bullies even at the bar; and there, as everywhere, spirit and firmness win respect and security from attack.

The first actual, *bona fide* client you have, no matter who, and no matter how unimportant may be the matter he or she calls about, make him or her your friend by the kind attention with which you listen, and the tender and sympathetic way in which you treat and deal with them; and let this be the rule of your professional life. Do not be in a hurry to pronounce an opinion of the law, until you have mastered all the facts.

Few in legal trouble are quite content with an opinion or advice upon the law. They want more. No part of the duties of your calling are more important, more difficult, and none so delicate, as that of advising; and on your skill in this department, and upon the kindness and consideration with which you conduct your interviews with

your callers, will in a great measure depend your success. Whatever you are doing, if it is possible to leave it, drop it at once to attend to whoever calls, and turn to them as if it was an actual pleasure, as no doubt it will be, to have them call.

Ordinarily the lawyer's duty, when consulted, is ended when he has fairly and fully expressed an opinion of the law involved. Few clients are satisfied with that. They usually want to know what they can do in the premises. This, of course, is involved in the law opinion. But they are apt to go further, and ask what they had better do. This is a question for a friend rather than for a lawyer; but the lawyer must become a friend. I have preferred, when the question involved was the commencement of a suit, to lay open, fully and fairly, the whole ground involved, explain the uncertainty and probable costs, and leave them to decide; but if I had to deal with a weak and timid nature—with a woman or a young person—and the case was in my mind tolerably clear, and involved a question of undoubted moral right, I have unhesitatingly taken the responsibility of advising as a friend as well as a lawyer. It is almost surprising the facility, as well as the ability, one acquires in the important character of an adviser,

and the confidence which the character of a sound, judicious, and cautious adviser inspires; and if you once acquire it, there can be no doubt of your success.

You will, of course, be sought by women in distress, often poor and friendless, and sometimes attractive, and possibly designing. To you, all women are chaste, and your manner and deportment must be so absolutely pure, that all may approach you with confidence, and go away with the certainty that they can receive from you nothing but respect and consideration. The lawyer hears heart histories and chronicles of the inner lives of men and women, especially of women, and the confessional itself should not be more sacred than the narrations confided to him. They are not your secrets or property, and no word or lisp of them should at any time escape from you. This silence of all communicated to you will become a habit of the mind, from which you will soon find no inclination to depart.

I am in the hortatory vein, and will continue. As you know, there is such a thing as *sharp practice*, which is never to be your practice. It is not through this that papers mysteriously disappear, or new ones are found among files. This involves

vulgar larceny and forgery. Nor yet in having arrangements with opposing counsel, which are repudiated. This is vulgar and atrocious lying, consistent with no gentlemanly notion. Sharp practice consists in the violation of the letter of no rule of court, and no infraction of the rules of truth ; but in so enforcing the rules of practice that an undue advantage is gained of an opponent, pushing and striking in actual silence, but breaking no rule. The confidences of lawyers, their unquestioning reliance upon each other, is romantic : each implicitly reposes upon absolute good faith and fair and liberal dealing from his brethren of the bar. A lawyer is out of court, or inadvertently permits a rule day to go over without having filed a plea or answered a rule, and he comes into court the next day to find a judgment by default, or a rule absolute taken against his client, which costs him much trouble to set aside, and his client much money. The placing him in this position is sharp practice, and he who took advantage of his carelessness or pressure of business may never expect favor from him, and is usually watched by the rest of the bar, who, by common consent, regard him as an Ishmaelite, with whom the rules of ordinary warfare are not



to be observed. When you hear a lawyer say that such a man must be watched, why, watch him.

The contests of lawyers are in open day, in the face of an observing and admiring world, which begets a chivalrous and honorable mode of dealing with each other, which does not so fully govern the contests of men in other pursuits; and the lawyer who fails to become imbued with the honorable spirit which this produces, has qualities that will preclude great success, ordinarily, and you will have to watch him.

Of all the places in the world, the bar is that in which a man is the soonest correctly estimated, both intellectually and morally, by his fellows, and the world very soon accepts and never revises this judgment. In the rough and searching encounters of the court-room, shams and seemings disappear in an hour, and no art or care can restore them. Labor for the good opinion of your associates, and that of the world will follow. If there is a calling in this world whose brotherhood, in their professional intercourse, should be governed by the golden rule, it is the profession of the law, and it is usually the practiced rule.

You will sometimes be required by clients, and

perhaps tempted by extra fees, or the prospect of success, to do or omit something which a nice sense of the right and honorable would not approve of. I need not say that there can be but one rule of human conduct, and that the lawyer is as directly within its letter and spirit, all the time, as any other human being, and can commit no infraction of it without fatal consequences to himself. It is quite enough that your client has bought your talents and learning; your honor and sense of right must remain yours, and you must manage the case and conduct yourself in your own way; and it is no excuse for a mean or unworthy act that your client required it. You had better retire from the case and the bar, unless you can be master of both the case and your own conduct.

The man of strong moral perceptions, and with a just appreciation of his obligations, and who has cultivated what is called the moral sense, finds no temptations at the bar; while the weak and dishonest will fall anywhere.

The practice of the law necessarily accustoms and familiarizes one with the essential elements of human nature, and its workings under all circumstances; with the sources and springs of human actions, and how men are governed; and the

reasonably successful man at the bar is invariably a man of position and influence, while his habit of addressing courts and juries, disciplines and brings out in their best excellence his talents and capacity as a public speaker.

The very nature of his studies; the mastery of law; its sources, scope, and spirit; the frame and object of statutes; the old mischief and new remedy; all so immediately connected with and springing from politics, pre-eminently fit the lawyer, not only to be a leader among men in the practical affairs of life, but especially qualify him to become a political leader; and hence it is, that a majority of the leading political places in this country are filled by lawyers; while in all free countries—and the bar flourishes in no other—lawyers have been an influential body, doing much to shape and mould public opinion, and usually in the interest of liberty and progress. This is not new from me to you.

The young advocate, accustomed to see himself passed by for inferior men in his profession, merely because they are his seniors, finds that he has become an object of interest in another way: politicians want his aid as a speaker in a campaign; and he has leisure, is ambitious, wishes to perfect

himself as a public speaker, make acquaintances, and here is his opportunity. A moderate indulgence may be helpful, but let him beware. He finds himself admired, and sees a crowd swayed by him—what under the heavens is so sweet as this evidence of his intellectual supremacy among men? How intoxicating the dream, that he may have been born to govern and command men! He begins to feel his strength, and knows nothing of his weakness. He sees his name on large posters and in newspapers; committees receive and wait on him; he fancies himself in the State Legislature, reforming the statute-book; he dreams of the National Hall of Representatives, on some great occasion, with the nation for an auditor; and he goes back to his narrow office, his few dead books and meager, unimportant cases, and the tame, thin, cold, severe atmosphere of a law court, with a disturbed imagination, if not with a dissipated mind.

Young gentlemen, be admonished. Every American must, in some sense, be a politician; an office-seeker, never. Be informed, have opinions, always vote; but if you would be a lawyer, avoid much participation in politics as a speaker or candidate. You can hardly, by possibility,

succeed in both: either will demand your entire time and ability, however gifted. They are horses running different ways. Look at the results of political life. Aside from the moral and mental wear and tear, what is the final come-out of the average successful politician of the better order? A seat in the State Legislature; possibly a Governor, with one or two terms in Congress, and then——. The man is out, at middle life or later, without a business, without fortune, and without a capacity to acquire either; with a few forgotten speeches, a scrap-book filled with partisan laudations of small newspapers, a dissipated and ruined mind, a regretful memory of the past, and an utter hopelessness of the future. For him there is nothing left but an unavailing solicitation for some starving office, at the hands of an Executive to whom he can no longer be useful; or he haunts the halls and lobbies of Congress, a candidate for doorkeeper, or in the prosecution of doubtful claims before its committees.

The most melancholy spectacles at the capital are these half mendicant ex-members, coming back soured, discontented, and disappointed, to sop up any drizzle of executive patronage, or

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gather the dirty crumbs that fall from the tables at which they once sat as honored guests.

There is, perhaps, a sadder sight still—the lingering and haunting forms of some of the most successful and honored of American public men, whose lives were spent in the highest service, who have finally passed to private life, and yet who, restless and discontented, cannot live out of the capital, and who linger and wander about, compelled, but unable, to retire. And who is to enumerate and sketch the broken failures, whose wrecks and ruins mark the devious way of political aspirants?

Be advised by one who dreamed and realized, as young lawyers will and sometimes do, but who awoke before either he or the country suffered much by his folly.

I hope you have studied law with the design of becoming lawyers—to press steadily forward, and work to its more elevated walks—and will be content to look there for an honorable reputation, and the means of a generous life. You can become good lawyers; you may become distinguished advocates; and more and better than both, you can develop a true, genuine, noble, pure manhood—the highest type and state of human

achievement. These are not accomplished at a dash, nor won in a day; nor are they grasped by the arrogant hand of genius. Patience, that will not be exhausted; pertinacious labor, that will not be discouraged; integrity, that cannot be bribed, directed steadily forward, also conduct upward, where alone the higher prizes await the faithful. To such efforts I commend you; to such destinies I dismiss you.

To the Seniors, adieu.

## LECTURE V.

### PUBLIC SPEAKING.

I. OF all the fruits of human labor—thoughts, ideas, philosophies, poetry—the products of the mind are esteemed the most wonderful. Of all the means for the communication of ideas, the conveyance of thought, the declaration of sentiment, the expression of emotion—passion, joy, fear, love, hope, hatred, or sorrow—of all the means of informing, producing conviction, persuading, or moving, the organs of human speech are the most exquisite and perfect, and by much excel the sum total of all others. Of all the agencies to please, excite, allure, seduce, charm, elevate, depress, or move, nothing in the universe of nature and the empire of art combined equals the human voice. In music it furnishes the idea and model; and that instrument excels as it approaches the power and compass of the human voice in giving expression to melody. Of all the



things the eye rests upon, it turns to the human face, with its wondrous combination of organs and features, as that which gives the most constant and highest pleasure; while the labor of the highest art finds scope for its greatest efforts in attempting to reproduce the grace, beauty, and majesty of the human form.

It is apparent that the art, or combination of art and science, which employs all these marvelous agencies and powers combined must occupy a high place in the field of human effort; and that he who possesses and can employ them all in their perfection, must hold the first place in human estimation; and that he who in any degree approaches the best, enjoys a proportionate position in the regard of men.

Such an one, in some sense, is an orator; and so rare and marvelous is the highest excellence, that the ancient world produced but two, and neither of these was perfect. Can it be truthfully said that the number has since been increased?

Strange, is it not, that, while every human being is born with the rudiments of all these agencies, organs, and powers, with occasion for their constant use, and every inducement for their perfection—with the certainty that every devel-

opment and increase of their capacity is increase of power and consequence—so few excel as speakers? But when we remember how sparingly and how eccentrically human gifts are distributed, and what a combination of rare qualities, and all of the best—physical, mental, moral, of temperament and spirit—must concur to produce the orator, we may not be surprised at the rarity of their union. And especially, too, when we observe, that of the whole talking, babbling, gabbling race, how rare it is that you can find one who can produce a single forcible and elegant sentence in writing, and still more, one who can utter one in private conversation.

See how dumb the inexperienced speaker is, no matter how endowed, when called up, even at a private dinner party. Recall the absolute terror which the idea of such a call produced in Thackeray and Hawthorne, and a host of similarly gifted and accomplished men.

II. We do not talk much of orators, save as the organic remains of an older period. We call the men who exercise the art, or who occupy the place of the orator with no art, public speakers—men who converse or speak standing, and to whom

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others are supposed to listen ; and yet how much it takes to fit up and furnish the successful public speaker of to-day, and enable him to acquit himself creditably. He must rise collected, self-possessed, with easy, modest confidence, with an attitude that does not repel, and a manner at least negatively good. His voice should, at the worst, not be harsh or unpleasant, and capable of modulation and inflection ; his words simple, flowing, and well and distinctly pronounced. He must, in a few words, commend himself and subject to the favorable consideration of those whom he addresses. He must be able to state his propositions simply, concisely, and distinctly ; his narrative of facts, naturally, clearly, and forcibly ; his argument arranged in a striking and logical order, so framed and adjusted that its application is at once appreciated, and nothing omitted that renders it complete and satisfactory ; and an infinite deal more, if he would be among the best. The man must be alive, and full of warm, red blood that beats. He must be capable of kindling and glowing, and of imparting life and warmth to whatever he touches. His subject must grow and rise, his field broaden, and his horizon enlarge. Argument and its material

must heat and melt and fuse, and take new shapes of strength and beauty. A structure must go rapidly up, symmetrical and shapely, capable of occupation and defense; and fancy must come, and imagination must quicken, and trees with verdure must shade it, and grass and flowers surround it. The whole person, ceasing to be material and physical, must become etherealized, and possessed as by a spirit. His eyes will flash and speak; his attitude will inform, command, and enforce; while his hands will become endued with an actual power, giving meaning and force and beauty to words freighted with the combined burden of brain, heart, and soul.

The man must have something of this capability; and when at his best, when fully aroused, with his forces armed, words must come readily, arranged in fit and happy forms, tendering themselves, and asking for utterance with finished and apt figures and striking illustrations. His varied arms and implements must present themselves with their handles for his grasp. His information, his resources, his means, must be inexhaustible, and all ready marshaled and in order. If he is interrupted—if a question is asked—it should be a new source of interest and effort.

New strength, new powers, new figures must be ready for the occasion; and when that is happily disposed of, he must naturally and gracefully return, with increase of force, to his main labor.

When the theme is presented, the structure completed, let the artist, with his weapons in his hands, in the heat and glow and glory of his achievement, with the air effulgent about him, with undiminished strength, sit down amid unexhausted material, with the wish strong in the hearts of his auditors that he had continued, that he would never stop. The hour and opportunity were his, and he dominated them right royally, and for a moment he touched, perhaps, the pinnacle of human achievement. The glow passes, and the glory fades. No power could gather up, transfer, and preserve it; and its memory, a living marvel, lingers in the hearts of, at the most, a few hundreds of men, who witnessed, heard, and felt it. One is sad when he thinks of the greatness of the orator's achievement, and realizes how evanescent and transitory it was.

Do you say that I have sketched a remarkable spectacle? It is such, and yet I have witnessed

at some scores of times. The picture, if striking, is true to the life.

The improvisatore, who extemporizes rhymes, verses, and sometimes poetry, suggested by any given subject, is often a mark of wonder; but his power to produce does not exceed, if it equals, that of the thoroughly-informed, cultivated, and practiced public speaker. Such an one, in the maturity of his powers, will, on the shortest notice, speak well upon almost any topic of human interest.

III. And I say to you, young gentlemen, that it is in the power of almost any youth, born of American parents, with study, practice, and perseverance, to attain an excellence as a speaker, that will enable him, in some degree, to approach the outline I have just sketched for you.

I believe, relying upon history and the observations of others, that no people, certainly no modern people, possess more natural aptitude for public speaking than the natives of this country; and I know of no American who has attempted it who has not, with practice and effort, become a fluent speaker. Indeed, it is a remark of foreigners, the facility and fluency with which

Americans speak in public. And yet, although, under our form of government and social life, almost everything is originated or carried on or consummated at a public meeting, and speaking is the universal agency employed for everything, little or no attention is paid to it as an art, and no preliminary study or training is deemed necessary. Whatever Americans may or may not do, it is the national faith that every American born can, with no other qualification, edit a newspaper, represent a district in Congress, and make a speech. Indeed, there is a sort of impression, sometimes shared by men who should know better, that nature unaided forms the best speakers, and that to her should be left the whole business of producing them. This is a grave matter, and we will be practical. Take any man who thinks that training and study are useless, and put him up to make a speech; and if he attempts it, it is hazarding little that he will not make an articulate sound. If he succeeds in uttering a sentence, write it out and show it to him, and he will be slow to attempt it again.

Think of it: here are two of the most important professions, whose trade it is to speak in public—the ministry and the bar. No man now

thinks of setting a man to preach without some study and mastery of theology; so that he may have something to advance, some mental source to draw from; otherwise, he would have nothing to say. But he is put up in the pulpit, with no capacity to speak, and as ignorant and as incompetent to preach as if he knew nothing of the subject; and all that he ever learns is by his discouraging, imperfect, and halting practice after called to a charge. No wonder that he falls back upon written essays and poor reading, and forever remains inefficient. And yet the faith that would trust to grace and inspiration for the power and manner of speech, might also trust to the same source for the matter to be delivered. Indeed, matter was promised. And so of the bar, where really less depends upon speaking. A man is asked to devote three years of intense study to master the law, and not an hour to fit and prepare him, to give him courage, strength, and ability, for the ordeal of his first trials—trials of himself, more severe and doubtful than the issue submitted to court and jury.

IV. The purpose of speaking is to inform, to convince, to persuade, or to move; and often all



are to be accomplished many times over in a single speech. How can you inform another, unless, in a clear, simple, natural way, and to his entire apprehension, you can tell him the matters and things you wish to impart to him? How convince, unless you are master of presenting, in a forcible and logical manner, the reasons that conduct to the desired conclusion? How persuade, unless you can please, win, allure, charm, and induce? And how move, unless you can excite, stimulate, arouse, heat up, or melt down, and so produce the sensation desired? And all this supposes that you have ample matter. You know the power of the mere charm of manner. Add the charm of speech, coined words, sweetness of voice, winningness of smile and eye, beauty of elocution, tenderness of sentiment, warmth of sensibility, and grace of gesture. You know that goodness can be made to appear repulsive, and beauty can be disfigured and rendered ugly, while charity herself may assume the air of a swindler; and all by the garb in which some owner of them all might present them; while ugliness and disfavor can be made to appear becoming, and vice goes innocently about, a seeming virtue for the time.

However good a thing may be, there is no harm in putting it at its best; and whatever is of importance enough to be said at all, is important enough to be well said; and the ability and power to say everything well is that which we earnestly wish you to acquire and cultivate. This is a work which you only can do, each for himself. We can, perhaps, aid less in this than in any other field of your labor. We can furnish hints and suggestions and useful criticism, but we can no more make an orator than we can endow a statue with life. All the inner work and processes must be yours; all the outer exercise, effort, and practice are your work. We can help you. With attention on your part we can save you from many faults of attitude, gesture, and manner; can correct your pronunciation and grammar; can suggest methods for managing the voice, and detect faults of articulation; and beyond these we cannot go.

V. Two things must concur in the most ordinary labor of the speaker: matter to be delivered and its actual delivery. The one involves the whole art and science of composition; is the whole inner life, generation, process of development, growth,

maturity, and arrangement of the essential speech; as the other is the whole out-power, grace, and strength of its utterance—its vocal publication. The intrinsic excellence of the speech itself will depend upon the former, while its effect will be largely due to the latter. When the highest excellence in both unite in the same person, they form the first speaker; and the result the highest effect of oratory and eloquence.

Which is the most important? Don't ask the question. One would be inclined to answer at once that the matter was vastly the most essential. But then he remembers that a dumb orator cannot exist, and that voice and speech are as important to the orator as brains. Of what conceivable value is a casket of the rarest jewels lost beyond recovery? And of what use is the rarest and most beautiful pitcher, admirably constructed to pour out, deliver, and yet which can never contain anything?

I must confess, however, my preference for matter. I can at least imagine the richness and splendor of the jewels, though I may never see them; while of nothing do I weary so soon as mere empty voice, musical though it be. And mere manner and physical grace and beauty,

when we come to know that they are the outer mask of mere nothing, lose at once their charm.

VI. Let us turn our attention, then, to this matter, the body, heart, and soul of our speech. And by matter I don't mean things in the raw, material in the rough, ships in trees, and pearls in ocean depths—"flax in the bundle," as the rude figure was—but a store of complete and finished things, wrought and perfected up to the latest style, with all the modern improvements, and made for specific uses—implements with handles and edges. Men don't bore down trees, however they may men and audiences, nor do they cut with axes hung on strings. Guns are to be charged, and with ball; and blades, to be keen and tempered. Fruits are to be ripe, and meats and breads, like heads, to be baked; and if the occasion is festive, real red wines with soul, and natural flowers with color and fragrance, with the dew still on them. Not only must the whole cargo and outfit be as complete and perfect as may be, but everything must be of one's own manufacture. I don't mean that one must quarry his own rock, and mine and reduce his own metals; though he should certainly gather his own fruit, and pluck

his own flowers. We may and must be indebted for much to others; but we are to take it in, masticate, swallow, and assimilate, and make it ours, part of ourselves—our blood, muscle, brain, and spirit. We take of every man, from everywhere, from all fields, highways, mountains, and plains, whatever is good, and mix and mingle and produce something new and strong of our own. Don't stuff and cram, and then turn out a confused mass of other men's goods and wares; and don't bring forth slop-shop garments, with the sellers' cards and prices still on them.

We have some speeches, and notably in Congress, not tolerated of the gods or men, made up of odds and ends and parings of other men's speeches and essays, and scraps of poetry which have been kicked and cuffed and maltreated about the world's vulgar ways, with nothing of the orator's own but the thread on which these old tatters and shreds are displayed. Time was, in the old days of the stilted and stately, the swelling and inflated, when the old classics underwent daily vicarious suffering for the sins of others, and an apt quotation in the House of Commons, according to Wraxall, was sometimes decisive of the fate of ministers. And even at the beginning

of our time, the great Webster had a tenderness for not over good Latin. And there was almost a feud once, growing out of a quotation by Mr. Emmett, in the old Supreme Court, in a case where Mr. Wirt appeared on the other side.

VII. I must impress upon you—and without which real and permanent success as a speaker is impossible—the imperative necessity of thorough and complete preparation. The speaker must arise full—brain, heart and soul—filled to the lips with his subject, with all his faculties and sensibilities alive, and tremulous with a ready eagerness to perform their part of the task. He must know that all his implements and material are arranged and ready, all aglow with latent vitality, and ready to spring into his hands. A man thus prepared arises master of himself and of his subject, and at once becomes master of his audience. If he feels any embarrassment, it comes from the presence and weight of his theme.

It is rare, perhaps it never has occurred, that a man has arisen and delivered a really great speech, full of profound matter and sustained power, without this ample preparation. Nor is there a name in the catalogue of orators the

owner of which was equal to such an effort, unless we may perhaps mention Mirabeau. To assert that this can be done, is to assert that a man can be great without achievements, and profound without study. No genius was ever so rich and strong, that it could throw off grand thoughts, great arguments, and profound reflections spontaneously, as the cloud throws out lightning. And even the cloud must be surcharged in advance.

But is there really no extemporaneous speaking? Do we never witness the astonishing phenomena of off-hand argumentation and speech, full of masterly thought, and radiant with power? The most effective speaking is usually the really extemporaneous, but its effectiveness is mainly due to previous thought and preparation, as I believe.

The practical extempore speaker is seldom unprepared to speak upon any subject that he will permit himself to undertake. He mentally sketches whole speeches, sometimes completes them, and sometimes leaves them in outline. He makes fragments and little studies. His mind is always at work taking in material, working out thought, elaborating argument, following out and

finishing figures, and observing where grow beautiful flowers, all of which, more or less finished, are laid carefully away for use when wanted. He gets clues to thoughts and hints of ideas, all of which he defines, tests, and rejects, or stores away. He is constantly coining happy expressions, turning and arranging and polishing, or he strikes out a bold metaphor, or a strong and lofty flight. Everything he sees and hears contributes to him: and he sees and hears everything, and he absorbs and subsidizes all, and all are worked up in the line of his art; and memory, trained and perfected, ever attending him, carefully gathers up and lays everything away where she can at a moment, when bidden, grasp and restore them. When the occasion comes, he is ready; and an astonished and delighted audience wonder at the grandeur of his, to them, freshly-made thought, and are dazzled and amazed at the splendor and brilliancy of his imagery, and the naturalness and fragrance of his flowers, that may have been with him so long that he has forgotten when or where he first obtained them, or whether they are all really his own or borrowed.

The advocate is necessarily the most extemporaneous of speakers. He cannot write out his



arguments. He cannot, as a general rule, compose, even mentally, in advance. He knows the issue, he hears the evidence, and the moment it closes, if he has the affirmative, he must, without further time, rise, and, as he may, sustain by argument his side of the issue. He rapidly acquires the capacity to see the force and application of evidence the moment he hears it. He sees all its various combinations long before it is completed. His mind has firmly and securely grasped it all, and almost unconsciously it analyzes and arranges the whole. He rises, and by use can think best on his feet; and as his mind quickens and warms, heats and glows, with its labor, it strikes out new views and bold and startling contrasts, and goes further and with more power than it was otherwise

• • • capable of; and yet the substance of the whole, with its method and arrangement, lay embodied in his grasp when he rose. He worked it out on his feet, and the mere heat of his labor added intensity and force to its effect; and this heat and force and fervor is a source of strength, power, and invention that the extempore speaker may always calculate upon, who really has an accumulated stock in hand, and what the writer and memorizer of speeches never has the benefit of.

VIII. It is said that *Æschines*, the rival of *Demosthenes*, first practiced extempore speaking; that is, his preparation was probably mental wholly, as compared with writing and memorizing. *Demosthenes* composed and wrote his out with the utmost care, going over and over with them, till his meaning was so clear and transparent that he could not be misunderstood. Every particle of foreign matter and sediment was washed out, and such language finally selected that but one meaning could be conveyed by it. Not a particle of ornament, no touch of fancy, no tint of imagination, no rhetoric, no effect of mere words. Transparent statement, pure logic, dry law: the whole cold, clear, and colorless. And such was the ancient model of the age of *Demosthenes*; and this is the subject of complaint in a celebrated dialogue upon oratory, attributed to *Tacitus*, the historian of the early Roman empire. The ornate, the flowery, the rhetorical—"the Asiatic," as *Wirt* called it—if not introduced by *Cicero*, was by him carried to perfection, and has ruled largely since.

The effect of *Demosthenes*'s speeches must have been due mainly to his marvelous delivery: the pure heat and passionate vehemence, the force, beauty, and grace of the orator. His speech of

the crown, made in defense of his friend Ctesiphon, who had proposed a crown of merit for him, and was prosecuted by Æschines for making the proposition, seems very cold and tame, and yet, as he delivered it, it caused the exile of Æschines himself.

It is said that Pericles wrote all his speeches, as did most of the orators of eminence of that day. Cicero wrote and elaborated all his. Indeed, many of his most famous were never delivered at all; while Demosthenes often wrote speeches for others.

Coming towards our own time, we know that Sheridan wrote, re-wrote, committed, and delivered, and re-delivered his, before he ventured to let them off in Westminster Hall or the House of Commons; and even the freshest of his jokes and sharpest of his points went through many editions and underwent many changes before the world had them. Wirt informs us of the labor of Richard Henry Lee as something like that of Sheridan.

It is said that Mirabeau, in the multitude of his huge labors—and there never was such a worker—had his speeches sketched and sometimes written out by others in advance; but when he came to

pour his might and energy, his heat and passion, into, or rather over, them, they were shattered or overwhelmed, and lost. They furnished hints, but bore no more resemblance to his delivered speech than a lay figure to a fierce, vengeful, and mighty giant.

We are told that Chrysostom wrote and committed his sermons. So did Whitefield, some of which—and he never had many—he preached an hundred times; while Robert Hall thought out, and composed his mentally.

Mr. Webster, as we know, wrote the most of his speeches, as did Fisher Ames, and as is the habit of Mr. Sumner and many other of our eminent public men; while Mr. Corwin, the most eloquent man who ever spoke English, never wrote: but then his mind was a storehouse of inexhaustible riches.

IX. I have thus spoken more directly of the preparation for some particular occasion, and only incidentally of the general acquisitions of a public speaker. His appearance in public is seldom, perhaps, and exceptional, save in the office of a minister of the gospel. The lawyer in a large practice speaks comparatively but a few times,

and the occasions for other speakers are still more rare. The sum of a speaker's life is made up mainly out of his forum—elsewhere; and it is from that elsewhere that he must bring the bodies and brains of his speeches.

It is the ultimate purpose of the soldier to appear on the field of battle; but battles occupy little of his time. The whole of it is mainly spent in learning how to be a soldier, and in the accumulation of material for the struggle. In addition to this, the orator is the general and grand army of all arms—quartermaster and commissariat; and with the whole world to forage in, and with all its arsenals to arm from, with the experience and lessons, the lives and examples, of all its masters to teach and stimulate, it is his own fault if he does not win eminence.

Time must be had for study and practice, and thoroughness and completeness of general preparation and outfit, so that, when a call is made, it ought to be met mainly from accumulated resources, rather than from new and temporary pickings and stealings. What I have said of the mental labor and training of the law student is directly in force and point here, and I must beg you to remember it all.

A lifetime of labor and application is requisite to reach the first places; and there is nothing which men do in which they are capable of such constant and ever-continued improvement, and without ever attaining perfection, as in the art of speaking; and usually the faculties and powers most useful go on perfecting until after the first decay of the physical frame; and many of the world-renowned orators were old men, and best in their age.

I pray you, young gentlemen, be not deceived in this, nor become discouraged and discontented, if you have to wait and work.

The instances of high attainment in oratory in youth are rare. History brings us none from antiquity, and modern times furnish few. The elder Pitt (Lord Chatham) entered Parliament at twenty-six, and made himself talked about at twenty-eight or twenty-nine. The younger Pitt was born great, and was famous at twenty-four; while his great rival, Fox, entered Parliament before he was twenty-one, and attracted notice at once. Erskine was admitted to the bar late, after serving in the army, and became noted at thirty. These instances are rare, and more rare or occurring nearly all together and in one

country. A young man will get reputation from a speech that would attract no notice in riper years, and because he is young; but few actually achieve fame before thirty-five or forty years of life, and often later still.

X. Of the inner lives and experiences, the methods and labors, of the great masters of oratory we know but little. None of them left confessions, and biography and memoir are not rich under this important head. We are told that the first Pitt translated Demosthenes's speeches half a dozen times, and committed the sermons of Barrow to memory; that he went twice through Bailey's Dictionary; while his son, born an orator, underwent training quite as severe, and all for mere style and words. By what mode, or at the expense of what labor, they acquired the great mass of facts, and worked it up to knowledge, and assimilated and made it the source and substance of thought, and by which it assumed the definite form of ideas, and what were the processes of mental training, we are not informed.

We are told that it is useful to study the speeches of eminent orators, both for the purpose of acquiring ideas, as also to become familiar with

their methods, and perhaps catch their spirit and style. It is thought that a mind, by long familiarity with a given structure of sentences and habit of language, so to speak, will unconsciously acquire it; and I have heard of a young American who copied the letters of Junius for the purpose of catching his style. I doubt whether style is contagious. A weak mind may imitate or plagiarize; a vigorous one will have a style of its own, more useful to it than any that it can borrow.

Style and language, most important parts of composition, if it becomes necessary to determine them in advance of the delivery of the speech, would necessitate a reduction of the whole to writing; a process to which I am not partial. I think the mind had better be trained to produce and hold the substance of the speech in solution, with its method and arrangement outlined, and in a way to leave language and style to themselves. On some nice point it may be well to reduce ideas to writing, to be certain that the mind has thought closely and accurately. If the whole speech is reduced to writing, it must be for the purpose of delivery as written; when of course the main labor would be to recall and repeat.



If memory failed, what would become of the speech? If it succeeded, the chances are that it would be cold, thin, stilted, and artificial. Undoubtedly some of the greatest and most effective speeches ever delivered were thus composed and memorized; but the labor must be serious, the art great, and the practice perfect.

In passing from this part of my subject, I remark, that while we know much of the mind, have divided it into faculties, and have named and classed them, and know something of its modes of labor, and have given names to many of its processes—that while we can do much to improve it and help it, yet we know of no rules by which it can procure or produce certain or any results. It is, after all, a law to itself. Its strength, capacity, quality, and efficiency are its own. They can be enlarged, strengthened, made active, and capable of work; yet what they can do in a given case, no man can know till the effort is made. As no man can produce what is not in him, so no man can tell what another has, till he delivers himself of a specimen.

One thing, a speech must have action in itself—action, action, action. It must be alive and heaving, like the sea; run and leap, like a river: the

action of thought, the throb of ideas, breaking and upheaving old crusts—the beating of moved blood, the stir of heart, and swell of soul. This is undoubtedly the action of the old Athenian, to which the sympathizing body and members respond, and which they illustrate in attitude and gesture.

XI. Of words I remark, that in and of themselves they are indifferent—neither good nor bad, strong or weak; that all depends upon the use made of them; that they become good or bad as they are well or ill used; strong or weak as they carry strong or weak thoughts, or none at all. Without them speech is impossible, and with them good matter is effective or not, as it is fortunate in its mode of expression. Feeble matter is often made impressive by happy and well-arranged words, pronounced with force and grace. Words must be had, and plenty of them—apt, copious, and at will, and coming in well-arranged order. It will never do to wait long for one, or miscall or recall it. There must be the readiest and most perfect connection between the thinking apparatus and the vocal organs. When a thought is ready, there must be the fittest word-car, on at least a

level, and never on an up-grade, and all self-acting. What is so painful as the creaking, groaning, blowing effort which some men make to get these two warmed up and working together? When at their best use, words are not the drapery, the clothes, of ideas, but the sole carriers, that receive from the mind and deliver to the auditors its treasures, thoughts, feelings, passions, and impressions—whatever it has for them. They may become the very thought itself, more potent than shot and shell in the demolition of the bulwarks of old wrong and abuse. From the orator's mouth goes forth a great vital idea, potent and glowing, to disengage and banish some prescriptive outrage; or it calls into activity the dormant energies of a people from the half sleep of death, and buried under an age of oppression. What marvels are words, when burdened with the life and power of great thoughts.

The world, it is said, was spoken into being; and man seems most god-like when he speaks great re-creating words to his lost fellows. Then they equal the great actions which they cause.

Wise men, prudent merchants, sagacious traders, intrust their valuables—rich stuffs, precious

gems, gums, and spices—to the plainest, simplest, and most substantial caskets and chests, without show or ornament. Security and safety over the sea and across the desert are the sole objects. Swords and muskets, scythes and reaping-hooks, engines and springs, are made of iron and steel, the commonest and most enduring of metals. A great truth or a grand thought is strongest in its simple assertion. Many or long words obscure it; amplification compromises it; illustration darkens it. It abhors verbiage, and will rend the man who attempts to array it in the millinery of fancy. Chips and debris of ideas may endure furbelows and garlands, and bear confinement in word-prisons.

The plainest and simplest words are the best and only safe carriers of thought, spoken or written. We know them—everybody knows them—and their meanings. They are always at hand; will come when wanted; are easily pronounced; will readily arrange themselves in orderly sentences; and promptly and certainly deliver their freights. What use can be made of a fancy car, that nobody can get into or out of, except with a certain key that nobody has? And what can be worse than a long, curiously-sounding, strange

word, of uncertain pronunciation, and more doubtful meaning? And how it huddles and compresses the little, short, plain words of the sentence, and often hurting the speaker, who was taken with its sound, and his vanity tickled with its rarity.

I pray you ponder the rude simplicity of the Scriptures. Read the story of Joseph, of Ruth, or the more extended tale of Job, the poems of Isaiah. Study the unshowy diction of Shakspeare and Milton, or the grand poverty of the mere words of Burke and of Webster. They had much grave and ponderous matter to deliver, and would intrust it only to the plain, strong, ungarnished old messengers. The adornments and splendor of these masters are in the richness and splendor of material, and nothing in apparel.

If we can bring ourselves to this plain, common language, we need not trouble ourselves much about the acquisition of mere words. Our mothers furnished us with enough for a lifetime. We will not be compelled to commit to memory a dictionary. Let us fully master them, and know well their use. Their structure into terse and forcible sentences will require more labor, and much care and pains. Studying fine models will help; translating and copying are recommended. I commend

you to the habit of thinking in words, and the constant exercise of silent speech-making. If you would see how your speech or parts of it look, report it, examine, and criticise it. You will find it very faulty, as the most practiced speakers do, when asked to correct a literal report of even a successful speech. If you want to know how it sounds, get some of your associates to listen to it, with the understanding that they shall criticise it.

Much, I am sure, can be done by composing and then writing out; but care must be taken to preserve the force and freedom of the extemporaneous style, which is always direct, with short and vigorous sentences, and familiar, easy, conversational modes of expression. Men say that they can always detect a written and recited speech, and usually from the style and structure of the sentences; and I presume as much, by its lack of crisp, sparkling life.

I wish to remind you that rough and coarse language is not strong and forcible language; that vulgar expressions are not wit; that language, mere words, has no inherent power of its own, but receives all its apparent force and beauty from the thought it conveys. I do not mean that it makes no difference what words you use.

Some have been so long employed to convey certain meanings—put to base uses—that we call them vulgar, meaning that they are indecent; and from those which are eligible great choice exists; and the more felicitous and the more happily arranged are the words, the more effective will be the speech. Delicacy of sentiment will give chastity to language, as elevation of thought will impart dignity. A light, strong, graceful carriage, drawn by blooded horses, is certainly a better and more rapid means for the conveyance of passengers than a wheelbarrow propelled by an Irishman, plain and common as these last are.

XII. A vice of speaking and writing of our day and country is, a constant use of words which, under proper management, are capable of becoming the strongest, and of forms of expression the most strained and intense, for the ordinary purposes of communication. Everything is pitched and kept up on the high and overwrought key of the double intensive of chronic rhapsody, so that if a really elevated thought ever does come, it finds its own proper chariot overloaded with an inferior herd, all wearing its clothes, with whom it must bundle in and huddle on, merely as

one of the gang. Another, and if possible a more offensive, is, the stupid and vulgar abuse of an opponent, or perhaps of a really bad man—the merely calling him by offensive and coarse names, applying brutal vituperation, instead of a free, bold, strong, but truthful sketch, in proper language, of what he really is or has done, and leaving to others to supply names. Of all the things which you may ever be tempted to do, under any provocation, don't call names. If you think it ever becomes necessary to slaughter a swine in public, it must be done artistically, with the implements of the trade—cleanly, and with no offensive exposé of blood, bristles, and offal. I should then much prefer passing the animal to a professional, and spare myself and audience.

I dismiss words with a recommendation to secure and study Grant White's work upon "Words and their Uses."

Whatever words you employ, and however you arrange and use them, you have no business to misuse and abuse them, nor any of them, by a half birth or hurried delivery. Understand, that if a word is not wanted, leave it out wholly; if it is, speak it out plainly. Pronounce it so that it can be heard, and with its own proper name and



sound, so that it can be understood. Every word should be full and perfect, like a coined eagle. You may speak ever so rapidly, but that must never be at the expense of distinct articulation and correct modern pronunciation. Language should flow bright, crisp, and sparkling, and not ooze or droll out, thick and muddy. Form the words low and well back in the organs; keep the lungs full, with the head well back; and you will learn to speak easily and for hours without physical exhaustion, even to an out-door audience.

XIII. I must again remind you that the most wonderful of all human agencies—it may well be called a natural force—and one of the most powerful, is the voice. What so potent to command, so awful to condemn, so bitter to denounce, so resistless to persuade, so sweet to soothe, and so subtle to charm? Of all the sounds of the rhythmic world, what so ravishing as the voice of love?

An orator, like a river, must have a mouth; and nature, with her usual forethought, generally gives him a large one, which in use is found the best for sonorous utterance. A full, manly voice

can hardly come from a small mouth—one of your little, pouting, rosebud girl mouths.

The voice, no matter what are its natural qualities, can and should be trained, until it is usually soft and musical; and words always commend themselves by the sweetness of their sounds. Passion or pathos, when they really exist, will find their own proper voice. When simulated, they or their pretense should remain mute. It is useless to attempt to produce an emotion in others which the speaker does not intensely feel himself. Remember this. So, too, the voice must be capable of easy modulation and inflection—must have what we call compass. Nothing becomes so wearying as the one key—a monotone. I have now in my mind two distinguished members of Congress, both eminent speakers, and yet what an added charm, an actual power, each would receive with the capacity of a fine modulation of voice. Whether it is a fault of the ear, a natural defect of the voice, or, what is more probable, an early bad habit, I know not.

If a speaker pitches his voice too high, it is hard to reduce it; and he is apt to exhaust himself physically in the painful effort to sustain his forced key, and the necessary mental labor be-

comes difficult or impossible; while his audience is wearied with him.

Fix the eye on the remoter persons of your audience, and commence at the pitch of easy conversation with them, and go forward, easily and flowingly. The warmth and action of the speech, if it has them, will, as they arise, raise and warm the voice, which will musically sink with the ebb of the discourse to its ordinary level; and so it will rise, go up, and subside, and fall in pleasing variety, as the oration progresses, and thus become a positive charm in itself, as well as a vast aid to the matter. And nothing can be more delightful than a harmonious union of voice, action, and manner in perfect elocution. I remember the effect of these produced by Mr. Everett, with his finished elocution, in the delivery of his piece of masterly rhetoric on Washington. I sat for successive evenings on the platform near him with unabated delight. Nothing could be more happily adapted and harmonious. Matter, delivery, voice, articulation, manner, gesture, all the product of a single inspiration, or rather of high art. All sweet, easy, flowing, and melodious. Nothing abrupt or startling. Sometimes I was momentarily cheated into the delusion

that some real emotion or strong thought was moving the lower depths; but it invariably bubbled to the surface and subsided, a shining ripple of rhetoric.

Many distinguished statesmen, eminent as speakers, have had most faulty voices, both of quality and management. Burke delivered himself in a sort of a high-keyed monotonous cry, and he occasionally cleared the house. Mr. A. H. Stephens, of Georgia, hardly had a voice: it used to be a shrill piping; while that of the greater Thaddeus Stevens was always dry, husky, and monotonous. What can be more sonorous than that of Mr. Sumner at its best, badly modulated as it generally is, or what more perfect than the voice of Corwin? Clay and Webster were both remarkable for voices, which were as unlike as the men, and both had emphatic mouths, as has Fred. Douglass, a born orator. Wendell Phillips, the best speaking American, has voice and a beautiful mouth, and so have Mrs. Livermore and Mrs. Stanton.

Of all abominations, the most abominable is what is called 'mouthing,' which cannot be described, but which everybody has been shocked by. Do you speak after the manner of men.

XIV. The noblest, and as I have already said the most beautiful, object the eye can rest upon is the human countenance, when aglow with sublime thought, transfigured with holy sentiment, or subdued with tenderness. So it may become repulsive, terrible, or hideous. It has a power of its own, expressive of every shade of emotion, with the capacity of imparting to beholders what it so faithfully pictures. And next to the voice, it is the most copious agency that can be employed in speech, and by far the most potent that can address the eye; and yet few men make it really effective. Some seem to have no power over it beyond the mere heat of exercise; some distort and make it repulsive; while the power of some to express by it is really marvelous, especially everything partaking of the ludicrous or humorous. Mr. Corwin's faculty of this kind was wonderful.

It is the habit of many—I fear of a majority—and of really good speakers, as they enter upon the laborious parts of their speeches, to permit the face, with all its features, to fall into a fixed frown, or an expression indicative of deep physical distress, and to remain so. I know a distinguished member of the House, and a really able man, and

among its best speakers, whose face, in the paroxysm of his speech, expresses the agony of a patient suffering from bilious cholic. Now, whether one can master and avail himself of the full force of facial expression, he certainly need not turn his face against himself. He usually finds obstacles enough in his subject and audience. One certainly can cultivate and manage to wear a pleasant expression, ready to ripple into a smile, and, if moved to a frown, have the power to subside again to a peaceful aspect. I have observed, however, that there are among speakers more bad habits of face than of any other. Perhaps orators are naturally an ugly set of men.

XV. We see the speaker's form and face before we hear him, and usually have an impression of him before he opens his mouth. He ought, then, to be able to secure a favorable one. He should arise, or enter, and come forward with the self-possession, ease, and grace of a man of society. He should have the refined air and manner which can be acquired and formed only in the society of refined and accomplished women. I would impress you, gentlemen, that such women can and will do much for all who will avail themselves of

their aid, and most of all for the public speaker. Whoever learns to be at ease and graceful with ladies, will be so everywhere. The speaker certainly should be well dressed. Some men feel at their best only when well dressed, and I sympathize in that. Let such a man dress himself so as to be at ease with himself. It used to be said that Mr. Webster, on his field days, appeared in faultless costume, and, as it was vulgarly supposed, to give effect to his speech. Not a bit of it. He felt best when well dressed, and to secure that was his sole purpose; and hence his constitutional buff and blue.

You cannot get much help from rules as to attitude and gesture, manner, &c. Observing critics can help you to avoid bad habits. Much in these respects depends on the personal make-up of the man. A tall, commanding figure, with a grave, rather heavy face, imposes upon and bears us down by mere weight, which might be lost or destroyed by over-much action. So, a short, but thick and heavy man, would not move much, while a slight, nervous man could indulge in freer action. Indeed, I have sometimes thought that a slight man, physically, must largely excel, in the quality of his performance, to equalize the

advantages between himself and one of a stately presence.

I know from memory that a very young man's hands are an incumbrance on his first appearance in society or as a public speaker, and hence I speak of them. Well, let them hang naturally, to commence with; or perhaps the right may rest lightly on a desk or table, if such an obstacle is near—and a young man wants some cover—and then let the mouth and voice commence.

Unless he is quite sure of himself, the young orator would do well to have a few sentences that he is certain of. He must get a start. Very soon some thoughts will want the help of the hand, which will obey the call. And, as the speech gets warmth from motion, the other may be called in, and sometimes every muscle and fibre, etherealized and quivering with electric force, may become enlisted, and, if they do, grace and force will rule: the man will speak all over.

XVI. In my observations upon law students, I mentioned some of the qualities that enter into attitude, manner, and bearing, as will and courage—that courage which can disregard public opinion; that will face a mob, or a court, or a



king; that enables a man to bear himself well, it may be proudly and haughtily, in the presence of enemies, and helps so much to put him at his best in times of difficulty.

Demosthenes was reproached for taking money for blows; and, whether true or not, had he been braver, he would have been a greater orator.

Cicero lost the case of Milo for want of nerve. He dared not deliver for him his speech in the spirit in which it was written; and Milo, in exile, said that if it had been pronounced with courage, he had not been banished. Erskine, though a man of courage, dared not defend Hastings—was afraid of Burke, and Pitt, and Fox. Indeed, in the House of Commons he failed through fear of Pitt.

Lord Brougham won his highest honors because he had the courage to defend Queen Caroline. It was said that Mr. Pinkney had not the courage to defend Judge Chase, when impeached. Mr. Seward met public denunciation and an angry public opinion, and defended Freeman. And Mr. Chase faced the mobs of pro-slavery Cincinnati at great personal peril in several cases. Cultivate courage.

XVII. After all, gentlemen, whatever may be the study or ability, no man ever excels as a public

speaker without practice, and much practice—persistent, long-continued, and thorough. Our own Henry, like Mirabeau, burst out a finished orator, to the amazement of the world; but both were marvelous exceptions. Charles James Fox, the greatest English parliamentary debater, made it a rule to speak every night. What a bore he must have been! The Pitts and Burke succeeded early, but with intense labor. Demosthenes failed a score of times, to commence with, and Cicero did not succeed until after painful effort. Lord Lytton, as Mr. Bulwer, one of the most eloquent writers of English, failed notably in his first effort, and was ridiculed by Mrs. Bulwer, although he finally became a fine speaker. Disraeli was openly laughed down in the House of Commons when he first attempted a speech. He turned, and, shaking his clenched fist in the faces of his revilers, hissed into their teeth that the time would come when they should hear him; and it did. Patient effort, study, and practice, with a manly determination, will alone conduct to success.

XVIII. What is eloquence? Will I define it? I cannot do it. Will I describe it? I will not at-

tempt that. It has never been described, and definitions of it are failures. I can talk some about it. Many men have. Some have tried to analyze it, and think they understand it, and will sell you a recipe for making it. To me it is indescribable, and will only reveal and communicate itself. A man may be a very good speaker, and never produce real eloquence—may be able, profound, logical, fanciful, imaginative, with warmth and glow, can attract and enlist, and all that. Eloquence is not a property of matter; does not dwell in the mind; is not a quality of spirit. It does not inhabit a man's body, nor have its seat in the soul, nor hide in the passions, nor run in the blood, nor haunt the voice, nor linger in manner, gesture, or look. All may unite to produce it; and it sometimes springs out of very unpromising ground. I don't think the highest art of the most accomplished orator, with all his methods, by a deliberate attempt, ever produced it. I think it lies out of the realm of mere art. Nature and happy circumstances must do much in its creation. It can have no protracted life; born of an inspired moment, its memory only lives.

We may imagine an occasion: A gifted speaker, clear, easy, flowing, with matter, attitude, voice,

gesture, all harmonious, all with the charm of manner. We want a great deal more—radiation, power of creation, inspiration; add heart and soul; give life to inanimate things, beauty to ugliness, and grandeur to the common-place. Let things color and breathe and be warm. Let the voice melt to the soft, sweet, musical, endearing tone of conversation: such as we entreat and persuade in, with its marvelous flexile flow. Use the dear, sweet, home words of mother and sisters, every one of which brings the clinging memory and warmth of the hearth; the fragrance of child-idyllic life, that fall softly as the touch of caressing hands, and warm as the pressure of sweet lips, that all turn to meet and kiss: and then the marvelous thing we call sympathy comes to place the speaker's pulse against the listener's heart, and they throb together. And sympathy becomes magnetism—one heart, one life, one emotion, kindling and glowing and flowing together, and finding exquisitely satisfying expression by the mouth that speaks. What marvels, when speaker and audience become one, mutually giving and receiving: the audience bearing the speaker onward, and the orator lifting the audience to higher and still higher levels.

Eloquence is then sometimes attained—the united product of speaker and audience. For what is it but the inspiration of the strong, rich, sweet emotions, and giving to them celestial expression? What so satisfies, and what so fills the whole being with anguish, as to feel the stir of these emotions within, and to feel them die dumb? The eyes fill with tears crushed into them, the bosom swells and heaves, and they expire with a great mute throb of pain.

A man may have eloquent thoughts, utter eloquent words, may be an eloquent man, and make eloquent speeches, but he can never produce eloquence alone. He must have the help of his audience. He must have the art and power, born of those natural qualities, that give inspiration to the poet, forms of beauty to the painter, and ecstasy to the devotee—to create the faculty to help, and impart the charity to give it.

Eloquence is rare. It can no more be fixed and described than the most enchanting melody, which it resembles. The great composer hears it in his soul, and writes its representative characters; but it is mute until the great soprano or tenor gives it life. You may report the words uttered by eloquence, but they are cold and dead.

It is not all passion, is not all intellect, is not all soul, is not all sense; but the highest and most exquisite expression of them all, when united in the embrace of a great seducing and compelling force.

## LECTURE VI.

### GOVERNMENT.

I. LAW is the expressed will of a government, by which its subjects are compelled to regulate their conduct. As it is derived from and can be amended, repealed, suspended, or enforced only by government, I propose to offer to you some observations upon government itself.

Government may be said to be that power and its exercise which regulates and controls the conduct and affairs of a given people, state, or nation, and includes the working machinery and instrumentalities for carrying it on.

All government is essentially one and the same. Any apparent variety is due solely to the form and agencies employed for working its processes and producing its ends. Whether these are one man, with limitless powers, a constitutional monarchy and parliament, a magistrate and congress, or a pure democracy, the thing accomplished is

government. And so, too, the source and objects of government must be essentially the same, without reference to the form.

The quality and excellence of government are different things from its form, and doubtless depend somewhat upon that, and much upon the quality and genius of a people, and their fortune in securing wise and virtuous rulers.

II. The American idea of government is, that it can alone spring from the people. "Governments derive their just powers from the consent of the governed," is the formula of the Declaration. "All power is inherent in the people," respond the American constitutions. All government not of right must be usurpation. If of right, then it must have sprung from some source having power to confer the right, and which, acting freely, with power to do otherwise, has conferred the right.

We find men living in communities upon some implied conditions as to how they shall behave to each other; and we call this the social compact. If by any means a power should be created, vested anywhere, to enforce this mode of intercourse, that power would become its government.



If it exercised its functions by their consent, we should call it a rightful government; if without that, it ought to be considered a usurpation.

We say that all persons are born with or born to exactly the same rights, powers, and franchises. We say that these are inalienable; that is, they cannot, by force or fraud, be taken from persons, nor can they, by agreement, part with them, no matter for what consideration; and whenever taken from them, with or without their consent, they can rightfully resume them, because they are inalienable. This rests upon the ground that all persons owe certain duties, must perform certain obligations, which they can only render and perform while they are in full possession of, and with power to use, certain primal rights and privileges; and hence these must so absolutely be the property and condition of the person, that they cannot be severed from him or her. As no power can discharge the person from the duty and obligation, so no power can deprive the person of the means of rendering and performing them. As each person is born with these rights and powers, so, necessarily, is each person endowed with the right and power to protect them, which must also be inalienable. It would be absurd to say

that a man has a certain inalienable right, and yet may be deprived of the right to protect that right. The right to protect another right must be as broad and enduring as that other right.

When persons associate in permanent communities, each retains to the full these rights. My right to live cannot be violated, nor can my right to preserve and protect my life. If I had not this latter right, or did not exercise it, other persons or the community might so order affairs that my life might be lost. This right to protect my other rights I call the right of self-government; but as I am surrounded by, and associated with, other persons, in order to protect and govern myself I am obliged in some sort to govern others, and they, in like manner, acquire a right to govern me. And thus it is apparent that the right to govern others is the direct product of the right to govern ourselves; and it is confidently submitted that this is the sole source of such right, and that government is the sum total, the aggregate, of individual self-government. And as self-government is inalienable, no government can be rightful and just, in which all the subjects, under uniform rules and conditions, do not bear an equal

voice in directing, and an equal use of the means of directing.

III. If, as with us, this means is the ballot, then do all Americans, at the time of life when parental authority ceases, have the same right to its use; for it is by that alone that the inalienable right of protecting other inalienable rights can be exercised. And if there exists any law or usage that prevents this use of the ballot, that law or usage is an unwarrantable usurpation, and should be swept out at once.

I do not forget that the recognition of the truth of this proposition recognizes the right of woman to the ballot. I have never found any difficulty in following out a just and logical proposition to all its just and logical conclusions; and I only remark of this, that woman is born with the same rights and obligations as is man, and what, in the absence of human law, is right for him to do is right for her. If he has inalienable rights, so has she, with the same right to protect them. If in association he is to preserve the right of self-government, so should she. If his welfare and safety require the ballot, so do hers. And if this proposition is unsound, its fallacy can be

exposed. If it is just and logical, it should be incorporated into the working process of our governments. The justice of this proposition is recognized by the texts of the American constitutions, which not only declare it in terms, but use words to limit the ballot to the males, thus admitting in practice that, without these words of limitation, all persons of proper age would of right be entitled to the use of the ballot.

The constitutions of the late rebel States were barriers to the use of the ballot by colored men. With the destruction of those States these barriers fell; and Congress recognized the right in the colored males, and provided for its use.

No American constitution has ever attempted to create the elective franchise. All have recognized it as pre-existent, and have only provided for its exercise as the conventional method by which the natural right of self-government could be made effective. I deem it of importance that you should understand that your right to bear your part in the government of our common country rests upon an older and better foundation than a mere statutory grant, and that the mere repeal of a law cannot divest you of the right;

and that your present enjoyment of it is only the new exercise of a very old right.

IV. The form of government is determined somewhat by the genius, intelligence, and character of a given people, modified, no doubt, by race and climate, and often by the shaping hand of fortuitous circumstances, the fortunes of surrounding nations, and sometimes it is dictated by conquest.

The ancient idea was, that the individual, as such, was nothing: the state was everything; and persons were of importance only as they went to swell the mass, and were useful to the state. Under that idea, the freest governments were despotisms, without reference to their forms. As the person grew into importance, and his rights gained recognition and protection, the spirit, and sometimes the form, of governments changed.

Despotic kings and emperors claimed to rule by direct authority delegated of God; and whenever and wherever they felt compelled to relax or mitigate the severity of their rule, it was in the form of granting privileges and franchises, the bestowal of graces and favors upon their subjects,

and never in the form of a recognition of any supposed right inherent in the person.

There is doubtless some truth in the observation, at least in modern times, that a given government, in form and spirit, is about as good as the condition of its people requires; which is in effect saying, that government is usually compelled to consult public opinion, and conform to the spirit of the age, and accord with the characteristics of its people. While, in a qualified way, this may be true, governments undoubtedly do much to shape and fix the character of a people; direct or repress its energies; smother or develop its tendencies; enlarge and liberalize its minds, aspirations, and enterprises; or depress, darken, and dwarf mind, spirit, and manhood. In whichever way the tendency of a government is, it invariably will derive a reflex influence from its subjects in the same direction.

It is very likely true that every tribe and people have or have had placed within their reach a clue, which, if they had the wisdom, courage, and perseverance to lay hold of and follow, would conduct them to the open field of progress and human advancement; and this clue would undoubtedly

be the agency of a wise government, which many of them were unequal to construct.

V. Governments evidently began, like most things human, in the most illogical of ways ; never, in the first instance, formulated to secure the best interests of the governed, and rarely or never established with their consent, and usually without any reference to their wishes or interests, but wholly to subserve the ambitions, swell the conquests, and gratify the lust of some man's dominion. Being established solely in the interests of the party governing, it has been only in the rare cases, when the king or despot has had the wisdom to find his interests and those of his people to coincide, that his rule has been fortunate for them.

Governments more or less despotic, having established themselves, govern in the way that will apparently secure their own perpetuity ; and in the minds of narrow rulers, whatever would restrain and repress the subject, apparently would strengthen and add permanency to the dynasty.

Among peoples two forces, more or less active, have always in some form manifested themselves ; and from these manifestations we determine their

existence. The one is a tendency to equality—a democracy; and the other to accumulate power in the hands of the few—an aristocracy. The first always has the advantage of numbers, the strength of honesty of purpose, and the plea of good intentions. It lacks discernment, unity, and sagacity. As it must have a magistrate, it allies itself with the monarchical principle; and its chosen ruler often becomes its king.

An aristocracy, with unity of purpose, is opposed to a monarch, for it will endure no superior. It often monopolizes the learning, wisdom, and brain-power of a whole people, which, as the history of the race shows, has enabled it to establish and maintain a despotism more unendurable than that of a single man, and often more difficult to resist or overthrow.

VI. The simple forms of government are usually said to be four: a theocracy, a pure monarchy, a constitutional monarchy, and a democracy. No enlightened nation, in modern times, has perhaps furnished a sample of either. We find several composed of the mixed forms of constitutional monarchy, aristocracy, and democracy. A feeble monarchy often allies itself with an oppressed



democracy, to restrain or reduce a governing and haughty aristocracy. I believe no instance can be found of the combination of the people and nobles against a king, and few of king and nobles against a people.

England is an instance of an oppressed people: a feeble monarchy, and an arrogant, haughty, governing aristocracy; and I have sometimes wondered what would happen there if a king with brains and patriotism should come to the throne, and who should ally himself with the democracy, to crush the aristocracy.

The various forms of government are supposed to possess excellencies peculiar to each. A prevalence of the monarchical element is supposed to give strength; a predominance of the aristocratic is thought to insure wisdom; while honesty is the peculiar characteristic of a democracy.

Few now would recommend a return to theocratic forms. Whether because the inspiration necessary for such government is doubted or wanting, or whether man has become too perverse for such dominion in his ordinary affairs, the success of that form, as gathered from the annals of the peoples who were its subjects, has not been such,

in a worldly point of view, as to warrant its repetition.

I am inclined to doubt the assertion, that an absolute monarchy is the strongest; and such, I think, is not the lesson of history. The Greeks were certainly the most powerful when the freest, and so were the Romans. So were the wonderful cities of the Middle Ages—Venice, Genoa, and Florence. What despotism could have resisted the Spanish power of Philip II, like the Dutch Republic? What nation under kings would have remained unconquered, occupying the territories of the Swiss Cantons? When was England comparatively so formidable as under Cromwell? And when did the French ever exhibit such marvels of strength and power as during their first republic? And if, as Americans assert, our own Government is the best of human handiwork, then it is not true that aristocracies embody the most wisdom.

VII. Established and maintained, as most governments have been, in the interests of kings and rulers, who have permitted to their peoples the exercise of the minimum of their natural rights, consistent with the existence of the government,

the political history of the nations is the annals of the constant struggle of the governed to wrest something more of human right from the grasp of despotism; and this, as exemplified in the story of our English ancestors, began when the people were not an element in the controversy. That was a contest between the crown and an oppressed nobility, and resulted in *Magna Charta*, in which the people are not named, and who were then known only as villeins or serfs.

Nations are developed like individuals; and when the whole energies are employed for the maintenance of a bare existence, little improvement in mind or manners, little progress in art or science, is possible; and in the long, dark, rude infancy of modern nations, their peoples made little progress in the recognition of the rights of the person, or in the means for their protection. What may have been gained of a weak and sorely pressed ruler was lost to him again, when he retrieved his fortunes, or was swept away in the conquest of his kingdom. The struggles and wars of those times were usually either wars between rival nations, or civil wars between rival claimants to a throne, in which privileges were promised or granted to the people, to purchase

service or aid for the war. Those were the days of guilds and corporations, of the freedom of cities and boroughs, through which and by which accumulations of right were made and stored away, which rendered the later wars of ideas and freedom possible.

VIII. Americans are surprised, disgusted, and chagrined at the inconsequence, the final failures, of even the successful revolutions of the modern peoples of Europe against despotic governments. We have many times seen a people successfully rebel, overthrow a throne, and banish a dynasty, only to fail almost inevitably in the effort to establish a government without the monarchy, and followed sometimes by a return of the expelled rulers; and we are in the habit of saying that such a people are incompetent to self-government, and, complacently remembering our apparent success, claim offensive superiority for ourselves. We never allow for the diverse conditions of the experiments. Indeed, we are ignorant of many of them. We should remember, that when a king is expelled, he leaves behind him a considerable party—many and powerful adherents; that all the institutions of the realm are monarchical;

its civilization, manners, and customs formed under a royal influence; and all the traditions of the people partake of kingly rule. The people are unaccustomed to self-government; they are unaccustomed to obey anything not evidenced by the insignia of power; while the leaders of the revolt are themselves unaccustomed to use power, unfamiliar with administration, and doubtful of their hold upon the people, and fearful of exercising authority sufficient to enforce order and repress discontent: while the people, in their escape from severe and often wholesome rule, will not submit to the necessary restraint, from which alone order can flow. We are to remember also that they are hemmed in on all sides with powerful enemies, directly allied against their success.

In our own experience we were a democracy, pure and simple, from the beginning, planted on unoccupied soil. The company which colonized Jamestown were equals. No figment of aristocracy freighted the Mayflower. The element of aristocracy that afterwards found place in the woods was never dominant: it was merely intelligent respectability. Kingly power and its ministers, its trappings and liveries, were always foreign; and our peoples—homogeneous democra-

cies—accustomed to self-government, intelligent, making and obeying law—obeying it from sentiments of reverence and respect, and not because it was enforced with ostentatious show of power—had had the healthy growth of a hundred and fifty years, had other complete and organized governments, and were nearly unanimous in sentiment. And when we remember their origin, character, and qualities, and find them, after the expulsion of kingly rule, in full possession of the continent, without powerful neighbors, we find them under conditions the most favorable to success; and while thus situated, with time and opportunity; with the experience of war and peace; with much self-knowledge; with strong and complete State governments, deeply rooted in the soil, and fully in the confidence of their peoples; and with the experience under the Articles of Confederation, we framed the Constitution for our national Government, and we succeeded. And I confess, on quite mature deliberation, that I think we ought to have succeeded, while I am not much surprised at the failures of our European brethren; and I think it quite likely we should fail under the same conditions.

IX. In the present enlightened condition of political science, we understand the nature and elements of government. We know pretty well what it ought to do, and the quantum of power necessary to produce given results; but we shall always be met with certain known factors, of unknown power and strength, which must always enter into the working processes of every government. The highest places and positions in all governments, which will always be sought by the powerful, able, and ambitious, must have large margins for the discretion of those who fill them; and the problem to be solved is and will long remain, to so adjust the government and its working machinery that, while those who work it are pursuing their own ambitious elevations and renowns, they will at the same time best promote and advance the true interests of the people.

It is useless to say that public servants ought not to be selfish and ambitious; that they ought self-sacrificingly to devote themselves to the good of the people. The reverse is true, and always will be; and the thing to be achieved or approached is, to have the line of a strong man's ambition coincide with the line of a nation's advance along the way of progress: a still unsolved problem.

X. One of the defects in the existing practice of representative governments grows out of carrying them on by political parties. No method has yet been devised, and in our present stage of development none is to be looked for, of working them without; and when the rule is and must be, that a majority, for the time of its existence, must govern, it is seen that a minority may be practically annihilated, or at best but counted as so many non-voters, in apportioning representation among the people. Here is a State, for instance, in which one party is in a large minority, and yet so distributed through it, that it may not for years elect a single legislative or executive officer. It is seen that, for the practical purpose of governing, the members of this party really do not exist. They may think, speak, and write, and so express their views, but they can secure no other or further recognition.

XI. A plan has been devised to remedy this evil, which has received the favorable consideration of many thoughtful men.\* It is in effect to so arrange the elective districts, either by an increase in the number of representatives or by putting

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\* This has been incorporated in the Constitution of Illinois.



several single districts together, and thus increase the number to be elected in a district, and then allow to each elector a number of votes equal to the whole number of representatives, with the liberty to cast them all for one or two, or one for each, of the proposed representatives, so that, by concentrating them, the minority will thus secure representation. Suppose a district, in which the minority numbers slightly more than a third, should be entitled to three representatives, with the right for each citizen to cast three votes: it is apparent that, by concentrating all their votes on one, this minority would secure a representative. Or a State might be regarded as one district, with as many votes to each citizen as it has Senators and Representatives. No difficulty would occur in devising a practical method of working out this scheme.

It may be said that this minority may also be in a minority in the body of representatives, and it would still be powerless, and in effect non-existent. This is not at all the position of a minority in a deliberative body. It is in the power of a minority to be of the utmost service. Its actual presence—alert, watchful, discriminating—with its strong, clear, and just, or partial, unjust, and

partisan criticism—is never without effect; and often it is of the utmost service to the public. This opposition always keeps a majority on its guard—on its best conduct; and the most valuable hints—often the strongest and clearest light, is shed upon a proposed measure by the adverse criticism of its enemies; and many measures are shaped and changed by the heat and fire of a thorough and searching debate, brought about only by an opposing minority. Not only of the utmost service to the people is an able minority, but it is of actual value to the governing majority. It has been not the least of the misfortunes of the present dominant party that its majority has been uniformly so large. I am, for one, not anxious again to see a party so powerful for a series of years that it can at pleasure amend the Constitution. Ordinarily that should never be accomplished, save by the concurrence of both parties.

XII. The great subject of controversy among writers, as well as the frequent cause of revolts, rebellions, revolutions, and insurrections, has been the mere politics, so to speak—the form of government. This is the battle-ground between monarchists and republicans, and sometimes, with-

out much reference to actual, essential government, the thing accomplished, and to which I now invite your attention.

You will have discovered that, in these observations, I am attempting no methodical presentation of the subject. I quote no authorities, and follow no author. I hope only to offer suggestions and views that may help you in your examination of books, or furnish some elementary outline of the principles involved.

What are the proper objects of government, and what is it in its work and manifestations?

There is a very shallow and a very false saying, and which is very common in the mouths of many who should not utter it as a maxim embodying any considerable truth: "That government is the best that governs the least." If the sole function of government was to restrain men of their natural rights and rightful freedom, to strip them of property and franchises, it certainly would embody sound and practical wisdom; but as such is not at all the purpose and objects of rightful government, I am inclined to repudiate it wholly.

XIII. In a general way we may say that government should do for a people whatever is neces-

sary for their advancement and welfare, and which as individuals they cannot do for themselves. The accomplishment of this is government. Anything short of it is not the best government.

That a government should be a mere heartless skeleton corporation—merely maintaining itself, isolated and apart from its subjects; simply giving them a place among nations, and drawing from them a revenue for its own support; and shriveling itself to the discharge of a few enumerated functions, merely and purely political—may realize the idea of a model government; but it would fall far short of my conception of its duties.

The threefold duty of collecting a revenue, providing for the public defense against other nations, and the enactment and enforcement of law, securing internal order when scantily performed, would meet the requisitions of the rule, but would in no way meet the just demands upon the government of any of the modern enlightened nations.

Men have fewer and fewer isolated and merely individual wants and pursuits. They associate, extend, and enlarge. They improve, grow artificial, and complex. Immeasurably more wants are created, which daily grow more and more difficult to meet and supply. The absolute ne-

cessity for a universal and somewhat thorough education of all children is now generally admitted. This cannot be accomplished by individual enterprise. Does anybody doubt the power of government over the subject? Clearly this is one of its primary duties.

The general health of the people, which can be secured by the abatement of nuisances—the restraint of noxious manufactures; the draining of swamps and marshes; the analysis of deleterious substances; the tracing out of dangerous diseases; promoting the discovery of remedies; to guard and protect mines; take supervision of the use of steam; inspect steamboats, bridges, &c.; and so, in dense populations, the prevention of fires, the supply of fresh water, air, gas, &c.—in short, to create and enforce a thorough system of sanitary police—must be regarded also as a primary duty of the government. Allied to this is the establishment of hospitals, foundling institutions, and the whole subject of pauperism, registration of marriages, births, deaths, &c.

Who ever regarded the establishment and maintenance of the post-office system as the exercise of political power? But who now doubts that it properly belongs to the duties of the government,

as able alone to do it, and to do it cheaper and better than could any part of it be done by individuals? So, too, the whole system of means employed for commercial intercourse, foreign and internal, and by all the methods known, as well as to secure the cheap and expeditious transfer of persons from place to place.

The development of the natural resources of a country; the encouragement of all its useful arts and manufactures; the discovery and perfection of science—all these and innumerable other subjects fall under the care and within the purview of government, without any reference to politics, and whatever may be its form.

XIV. All these matters are of vastly more importance to our people than the success of a political party, the election of a President, or the enactment of a political law; and as our Government well or ill performs its duties in these respects, and secures or fails to secure their creation and perfection, it is to be esteemed a good or bad government. It is useless to boast of the freedom it allows and protects, if it leaves us to perish for want of a proper care; and it would provoke derision if, when compared with another form of government,

we should boast of its superiority; while it should be found that the subjects of that other enjoyed as much freedom, and at the same time, in all the essential elements of civil government, all their interests were much better advanced and protected than are ours. As we advance, improve, extend, refine, and come to have still more complex interests and artificial modes, our Government must open and protect paths, create means, furnish facilities, foster, and protect, and become also more complex, refined, and artificial. It must work out and accomplish its ever-present and ever-potent functions in these respects, silently, certainly, and efficiently, without break, jar, or intermission, like the silent, certain, and benignant processes of nature. To work out this is government; to work it out efficiently is good government. The government that governs in this way the least is a bad government, whatever men may say.

XV. One of the obstacles in the way of this result with us is its cost. In the first place, we require the ablest of our men. To secure this, such compensations should be offered, by way of salaries, as would practically secure the best, and would

not preclude a prudent poor man from entering the public service: a rate of compensation proportionate to the rewards that like talents and services command in first-class private enterprise. In the second, the outlay and expenditure in the mechanical structure of the necessary thoroughfares, machinery, buildings, offices, and apparatus by which these various governmental duties are to be performed; and that economy would be niggard meanness that should limit this expenditure below a liberal estimate, made with reference to securing the best and most useful service.

Third. Another constant and often a fatal hindrance to securing the best public results by a representative government, is the perpetual and all-powerful presence of a controlling party spirit. Not only all political measures, but every leading measure becomes a party measure; is supported and opposed, not at all upon its merits, but as it is proposed by a given party: and as its establishment is made to depend upon the success of that party, so its continuance is sometimes measured by the term of that party's power.

It is impossible to over-estimate the mischiefs of these constant changes in the *personnel* of those who work the government processes, and in every



possible department. I do not know as there ever will be any way of preventing this in the elective offices. The people at the present seem to regard these as specially created for the numerous aspirants; and in order to bestow them as widely as possible, they act upon the rule of rotation in office: the equivalent of the ruin of the public service. Thus, for instance, a Representative in Congress can only, in a tolerable way, master his duties and manifest his capacity to his associates on the floor, and fit himself for usefulness in a single term of two years; and just as he has in a way concluded his apprenticeship, he is usually discharged, and another unknown and untried man set to learn, and in turn dismissed at the same time in his career; and the people, instead of getting the best, thus get the worst possible service.

Not only is this change made in elective offices, but as often as a general change takes place in them, or in the Chief Executive, it is followed by a sweeping change in all bureaus and offices of the administrative departments; and a hungry swarm of raw, uneducated, inexperienced boobies, who have failed at everything else, hurry in pell mell to the places thus vacated. And the wonder

is, not that the various branches of civil service suffer, but that the Government works forward at all.

A remedy for this monstrous mischief is so obvious that all parties are to blame deeply for its continuance. Ascertained fitness for the place should be the only qualification permitted to secure an appointment; and if found efficient, the pleasure of the incumbent should be his tenure of office. The attention of thoughtful people will be more and more directed to this subject, and in time the remedy will be applied. Some party will be obliged finally and in good faith to make it a party measure, if it long remains without remedy.

Fourth. So far as the action of Congress is concerned, I have observed another source of difficulty, and which also extends to the Supreme Court of the United States: a difficulty which will rapidly increase, and in the case of Congress the remedy is not so obvious.

The various subjects demanding the attention of Congress have doubled within the last fifteen years, and were never before so rapidly increasing as now, especially with the present disposition to extend its legislation to subjects usually supposed

to fall within the scope of State law, and to assume the right to investigate, as Congress is pleased to call it, every possible thing within the boundaries of the United States.

While this rapid increase has taken place in the public business of the two houses, the means and facilities for transacting it have not increased at all, nor is it apparent how there can be any addition to them. Already much that is important suffers for want of time, while more and more laws and measures are left to the shaping hands of standing committees and committees of conference, the houses often adopting a report without any debate, and usually without a thorough discussion. Members are now paid by the year, and very soon will find that all the working days are inadequate to a proper dispatch of the public business. And so, too, the Supreme Court, with commendable diligence, finds itself about three years behind the current business, which still accumulates faster than it can be disposed of. It would seem that this might be within the reach of adequate remedy; but it is not apparent what remedy can be applied to the difficulty under which the Congress labors.

I have thus called your attention to the sources

of government, its form, and some of the objects falling within its proper scope; and mindful as I am that, in spite of my advice, you can hardly fail to become somewhat the political instructors and leaders of a race needing both, I commend the whole subject, so wide, varied, complex, and important, to your study and reflection. I purpose also to offer you some observations more immediately upon our Government, and also to unfold to you somewhat the laws that govern the rise, career, and decline of political parties among us.

## LECTURE VII.

### OBSERVATIONS ON THE CONSTITUTION.

I. By the term constitution, as applied to a government, we understand the fundamental conditions of its existence: the principles upon which it is founded, which enter into its frame-work, and determine its structure; the powers it creates, their distribution, and the means by which they are executed. A material departure from these principles, the exercise of other important powers, or the use of the powers conferred in any other manner considerably variant from the prescribed mode, would violate the fundamental conditions of the government, and therefore are not permissive. We mean a government of ascertained and limited powers. The principles need not be enumerated and defined in writing, nor need the powers and mode of exercise be formulated on paper; but they must nevertheless be clearly understood, and capable of specification.

The American Constitution was the logical result of the previous political, mental, and religious experience and growth of the American peoples, framed when that experience was quite ripe, and after a century and a half of healthful growth. Its formation was in a time of peace, on mature deliberation, and by a people who were enjoying the already existing advantages of established governments—governments that were to remain, whatever might be the result of the proposed experiment. Every part of it was reduced to writing by its framers, men who knew the use of words, and who selected them with care.

As a whole, it consists of principles and powers, and the mode of applying the principles, and the means of exercising the powers. The principles are understood and implied rather than expressed, and are nowhere defined. The text employs itself with their practical application, the creation and distribution of powers, and directing the manner of, and providing the means for, their exercise.

With the trite subject of the text of the Constitution I do not propose to deal; and I remit you to the instrument itself for its creation and enumeration of powers. I propose to call your

attention to the principles upon which it rests, and which have given it shape; some of the ideas that it seeks to realize in its working processes, as well as some of the ends to be accomplished by it; some general and broad views, not set down, perhaps, by any writer, but such as would occur to you on reflection.

II. The great and fundamental idea of the Constitution, and of which it is predicated, is the unqualified sovereignty of the people. They are the sole source of power, and alone confer it upon the agencies for its execution, directly or indirectly; and power thus derived can alone be used for some purpose of theirs. It is the antithesis of despotic government.

This proposition is nowhere stated in the Constitution or any accompanying paper, and is deduced indirectly from various articles and clauses of that instrument, and mainly from those which provide for the election of Representatives, Senators, and President. You observe that, without the exercise of this primary power, the machinery of the Government could never have started, and that an abstinence from voting by the people, at any general election, would be fatal to its contin-

uance. Suppose that for this year we should fail to elect a House of Representatives and a President. There is no authority for the present incumbents to hold over. The Government would suddenly perish. The Executive Mansion would become silent, and the south wing of the Capitol a marble desert. The Senate and Supreme Court would linger a little time in melancholy solitude, until Senators and judges, one by one, should pass out and away. In the absence of the great heads of the departments, the administrative machinery would go slowly and uncertainly for a few days, and stop, and the crowd of bureau officers would disperse. The unmanned national ships would be left to rot, the army would disband, and the national standards fade out in solitude.

You see, gentlemen, what consequences would follow a refusal or neglect of the people to exercise the elective franchise; and we have had many instances of the results of a bad use of it.

III. The acceptance of this Constitution by the people produced a nation, and not a confederacy. There is no expression in the Constitution bearing upon this proposition, and the only reference to it is found in the preamble, where it is declared,



that the first purpose of that instrument was "to form a more perfect union." Obviously this had reference to the union of the existing States. What effect was or ultimately would be produced by the Constitution upon the whole people, citizens of the different States, at that time, might not be apparent. Beyond the perfecting of a union, it was provided, that the citizens of each State should be entitled to all the privileges and immunities of citizens in the several States, while citizens of any State became citizens of the United States; and except by the process of naturalization, there was no other method of becoming a citizen of the United States. These conditions, narrowly regarded, would perhaps present the idea of an aggregation of peoples, having certain interests and agencies in common, rather than that of completeness and oneness, which constitute a nation; and yet, with the adoption of the Constitution, a new growth commenced, and more directly in the path of identity of policy, progress, and destiny. The vicissitudes of war, constant intercourse, an immense inter-State commerce, the effects of a common language, and the prevalence of common political ideas, with the constant association of the representative and administrative

officers of the General Government, through a lapse of years, tended powerfully to strengthen the bonds of union, and consolidate the peoples, notwithstanding the repellant force and power of slavery, until finally, in the furnace of the great civil war, that disturbing element disappeared, and all peoples became one; and we realize as a fact, among ourselves, that we are a nation: and that we have become such through the agency of the Constitution is apparent.

IV. The National Government is in all essentials and respects sovereign; and this also may be rather a result of the workings of the Constitution, under the variant fortunes and vicissitudes that make up our history, than a legal and logical conclusion, drawn from the text of the instrument itself. Certain officials are created—a President and Congress—to whom are delegated certain specific powers and duties, with whatever power may be necessary to exercise the granted powers and perform the specific duties. Everything else is withheld.

I do not know that any man has ever attempted to make a schedule of the powers, a sum total of which amounts to sovereign power. I doubt

whether that is possible. And certain it is, I think, that the framers of the Constitution did not trouble themselves with the thought, whether they were creating a sovereign power or not. They had in view certain things, which must be accomplished by a common government, and these they were careful to specify; and they then as carefully prohibited the use of any and all power not necessary for the accomplishment of those specified things. And whether the sum total of all the power thus conferred amounted to sovereign power, they never inquired; and beyond the enumeration, grant, and prohibition, there is no light on the subject in the Constitution. That it did not create a full sovereign, as we know, was always denied by a powerful section of the country until within the last few years.

The Government was launched, and as fast as necessary began to use and exercise sovereign power. For instance, there can be found no grant to create Territories and govern the residents upon lands outside the limits of a State; and yet Congress has always exercised it; and Chief Justice Marshall derives it as an incident of the general power to govern and care for whatever belongs to the United States, which is cer-

tainly a property of sovereignty. (Case of *Am. Ins. Co. v. Canter*, 1 Peters, 511.) And so also we find no express grant to acquire territory; but the same high authority derives that from the power to make war and conclude treaties. (*Id.*) We have not only acquired territory, but we have annexed at least one foreign nation, people and territory, as in the case of Texas; and still further, we have ceded territory, as in the instance of our northeastern boundary.

As you know, it was claimed, and notably, by Messrs. Hayne, Calhoun, and others, that a State had power in effect to stay or suspend the execution of a law of the United States in its limits, known as nullification or States-rights doctrine.

In vindication of this doctrine, and of the supposed right of the States, certain States seceded from the Union, as it was called. It was pretended that this was not a revolt, not a rebellion, but the exercise of a reserved right; and, as you well remember, all powers not conferred by the Constitution were, by its tenth amendment, reserved to the States and the people. And so the question was fairly and broadly made in the forum of arms, and ten thousand pieces of artillery thundered their inexorable logic upon it; and it was

established, that the Government of the Constitution was sovereign and supreme, and this was sealed by five hundred battle-fields.

V. The National Government, then, being supreme in all cases arising within its jurisdiction, gives rise to questions of no little difficulty. Where is the line of demarkation between the the States and the United States? And most undoubtedly the present tendency is the very opposite of the States-rights doctrine; and there is an unhealthy, not to say a dangerous, tendency to disregard the powers and rights of the States, and to centralize and consolidate all the important powers in the hands of Congress and of the National Executive.

The relation of subject and sovereign is that subsisting between every American citizen and the National Government. So long as the citizen is loyal, he may claim the protection of his sovereign. Suppose he is oppressed or neglected by his immediate State government: may he appeal to his sovereign paramount?

I admit, inclined as I am to an assertion of the rights of the States under the Constitution, I nevertheless contended, and as I insist rightfully,

that, while certain persons, as between themselves and certain other persons, were claimed and holden as slaves under the State governments, yet as between themselves and the United States they were subjects; and that if the sovereign paramount found anything in slavery that prevented this class of subjects from discharging to the sovereign all the duties of subjects, it could abolish slavery, and that the person could claim the intervention of his sovereign to protect him from the rigors of servitude. However this may be, where and what is the limit to the jurisdiction of the National Government, as between it and the State?

VI. The existence of such a national government as the last proposition contemplates imposes upon it duties and obligations commensurate with its powers and jurisdiction; and, recalling your attention to my observations upon the proper subjects of governmental care, I dismiss this head with the remark, that among the paramount duties of our Government is to care for and protect itself. You will remember that, towards the close of the unfortunate administration of the unhappy Mr. Buchanan, it was the doctrine of the majority of his Cabinet, in which he concurred, that while

there was no right or power on the part of States to secede from the Union, still there was no power vested in the General Government to prevent such secession, and of course none to compel their return; and, being without power, it would follow that the administration had no duty to perform in the premises, and acted accordingly: an error which the war also corrected.

VII. The Constitution is the fundamental law of the States alone. It does not in a direct way apply to the Territories, or to people not within the limits of organized States. It was framed and adopted by the people of the States, and is a union of States; and there exists no power to extend it elsewhere. The action of the people of a Territory, asking for admission into the Union, is an application to be admitted to the platform of the Constitution; and when admitted, it becomes the law of the new State. This is not only the principle governing this question, but there is abundance of authority sustaining the proposition.\*

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\*See the case cited above; also, *The United States v. Gratiot*, 14 Peters, 525; *The United States v. Rogers*, 4 Howard, 567; 2 Story on the Const., § 1328; 1 Kent's Comm., 8th ed., Lect. 17; Daniel Webster, App. Globe, vol. 29, pp. 270-273, 274; Benton's *Thirty Years in the Senate*, vol. 2, pp. 729-731.

The Constitution, however, as we have seen, produced a National Government, with complete sovereign powers; and as a result, Congress has ample power to legislate for the government of every body and thing American, located and being outside of an organized State, and such government is in this indirect way constitutional; and in the exercise of this constitutional power, Congress acts without constitutional limit or control, and without any limit except the implied one that it shall govern in accordance with American ideas, and constitutes an unwritten article of our Constitution. This is the true source of the power exercised by Congress over the people and territory of the rebel States. They for a time were not American States, within the purview of the Constitution, and hence were remitted to the discretionary government of Congress for the time being.

The proposition which I have just presented is not the popular idea. There is a vague notion that the Constitution in some way adheres to every American, and accompanies him wherever he goes, and attaches itself to everything he touches; that it underlies all American soil, and can be found everywhere by digging down; that it hovers over everywhere; and the moment we



conquer a foot of land, or acquire a rood of rock or sand, we find this everlasting, ever-present Constitution there awaiting us. This, I submit, is a mere figment.

VIII. On turning our attention to the frame-work of the Constitution, we observe that it broadly marks the distinction between the primary co-ordinate powers of Government, and carefully provides against any practical confusion in the exercise of them. One body of men is invested with the legislative, another with judicial, while the executive is to be exercised by a single individual; and neither of these can exercise any of the functions of either of the others. The power to recommend measures to Congress, as also the qualified veto, is not the exercise of a legislative function; while the President and Senate must concur to appoint to office, which is the exercise of a power to elect, and is neither executive nor legislative. Each of these branches of government is rendered independent of the others. In the nature of these powers, it is apparent the legislative is the stronger, as well as the more extensive, and may exercise much influence upon the other two. It cannot limit or reduce the

power conferred by the Constitution on the executive, but it may prescribe by law the mode of its exercise, and greatly embarrass him. So, too, while it cannot deprive the Supreme Court of its constitutional jurisdiction, it can omit to furnish the means for its exercise, and to some extent direct how it shall be exercised; while, under the pretense of reorganizing that court, it can legislate any or all of the justices out of office; and by refusing to make appropriations to carry them on, it could starve out the entire executive and judiciary, and nobody but the people could remedy the mischief. So, also, the House may impeach, and the Senate may condemn the officers for the time being discharging the functions of both co-ordinate branches, whereby a complete change might be worked; while the electors alone can deal effectively with members of the two houses.

IX. The Constitution provides a tribunal, and a qualified method for its own exposition and preservation. It and the acts of Congress and treaties made under it are the supreme law of the land. It thus becomes an active, ever-present rule of adjudication, in every case that can be referred to it, and in every court, from a magis-

trate's to the Supreme Court. And wherever any law conflicts with the Constitution, that law is to be pronounced void; and for the adjudication of all such cases the Supreme Court is the final tribunal, and its solemn judgment in the case is binding, not only upon the parties to that suit, but upon the President and Congress of the United States. It is thus seen that power to preserve the Constitution is vested in the Supreme Court.

I ought, however, to say to you, that whenever a question of a political nature—that is, one involving the idea of the creation of or the exercise of a mere political right or power—arises in a case before the Supreme Court, and in reference to which question Congress, in whom the political power is vested, has already construed the Constitution—that is, declared what its meaning is—the Supreme Court considers itself bound by that construction. As, for instance, a question comes up in that court, in which it is necessary to decide what is the status of a given State: that question is political; and if Congress, in any act or joint resolution, has declared what that status is, the Supreme Court holds itself bound by that declaration; so that Congress may decide the constitu-

tionality of all political questions, and does, whenever it legislates upon them; and no question of the constitutionality of such an act can arise. This last is really an unwritten article of the Constitution.

X. It is also a rule, that the public faith shall be inviolable. In practice this sometimes involves an awkward difficulty. The President and Senate concur to make a treaty. That is the exercise of an original inherent power to contract; but every treaty which requires the payment of money depends for its execution upon the House of Representatives, which has the primary power of appropriating money; and if it refuses, the treaty fails. It was but yesterday that by treaty we bought the Island of St. Thomas of Denmark. The House refused to pay for it, and poor little Denmark had to keep her island. I suspect that, had the purchase been made of Russia or France or England, the House would have taken a different view of the case, or we might hear of something more than mere caricature cartoons, and which, in the case of poor Denmark, were very poor caricatures.

XI. There is one section of the Constitution that in practice has become obsolete. An effort was made to place the election of the President and Vice President one remove from the people, by authorizing them to elect bodies of men, whose sole duty it should be to elect these officers, and that by virtue of the powers thus vested in them. In practice, the people, by the machinery of political parties, nominate the candidates, and nominate and elect boards of electors, pledged in advance to vote for them; and there is no instance on record where a single elector has cast a vote in violation of this pledge; and the device of the Constitution has proved to be a clumsy, expensive, and wholly useless expedient, and ought to be removed.

XII. Practically the example of Washington added another section to the Constitution—another of its unwritten articles—to wit: No President shall be eligible to a third election. Undoubtedly, had Washington been elected a third time, his successors would have been ambitious of the like honor; and, probably, had he retired at the end of his first term, we might have been spared many mischiefs which have since sprung

from the efforts to secure a second election. It would not have been decorous to do what Washington did not do.

In this connection, though out of the line of my comments, I wish to remind you of the inestimable blessings which have flown to us from another example of Washington: his voluntary relinquishment of power and retirement to private life at the end of the war for our independence. Many inducements, strongly colored with patriotism and seeming justice, would have conducted a less clear-sighted and a more selfish man to another destiny, the result of which cannot be imagined. Had he taken the sinister course, every small general who might have arisen since would have pursued the same course, and our country would have become an older Mexico; and we are, perhaps, as much indebted to Washington for what he did not do, as for what he did.

XIII. The Constitution ordains that representation and taxation shall remain a correlative right and duty. Personal liberty and the privacy and sacredness of domicil are solemnly decreed, and guarded by trial by jury and the writ of *habeas corpus*; while the right to give bail and exemption

from undue punishment are amply secured. The institutions and forms of republican government are made perpetual, and a practical democracy decreed, by a denial of power to confer titles.

XIV. What is called the right of revolution cannot exist under a self-originated, self-imposed, and self-conducted government; and it certainly finds no place under the Constitution, which contains ample provision for its own amendment or entire abolition.

XV. The last of the old amendments to the Constitution, framed and adopted under the influence of Alexander Hamilton, was made in the long time ago, of 1804.

The Constitution, as framed, avoided the vice of the recently-formulated American organic laws, that of running into unnecessary detail, and which, instead of being constitutions proper, become irrepealable laws, and which are often found awkwardly in the way of necessary legislation.

The work of our fathers was in the proper sense a constitution, dealing with principles, and giving general directions, leaving full scope for legislation. It was so constructed that it could

be made to apply readily and usefully to the needs of a rapidly-increasing people, a widely-extending territory, the opening of new enterprises, and the creation of new wants; and sixty-one years elapsed before a further change was made, or a new article was added to it.

XVI. Then came the 13th, abolishing slavery, and forever forbidding its possible future existence, not only in the United States, but also in every place subject to its jurisdiction. This was at once a self-executing edict, freeing every slave at the time within the reach of our power, and also a rule for the future. It was a logical conclusion of the recent war, and a fit addition to the grand elements of the Constitution.

XVII. This was followed by the 14th, the 1st section of which necessarily followed the 13th. This, which broadly declares that all persons born or naturalized in the United States are citizens of the United States and of the States where they reside, may be said to be the fitting crown of the Constitution; and as it also forbids any and all abrogation of the rights of the citizens, and imposes upon Congress the duty



of enforcing them, they seem to have been made secure.

I cannot but regard the rest of the 14th amendment, excepting, perhaps, the second clause of the 4th section, and also section 5, as unnecessary, disingenuous, temporizing, indirect, and as disfiguring the great instrument to which it is appended.

The 2d section is an attempt to induce the States lately in rebellion to recognize and protect the rights of citizenship of the late slaves, and contains a promise of increased national representation if they should, and also a threat of its diminution if they did not.

The 3d section fulminates a new penalty against certain classes of persons for their participation in the rebellion, and places its final infliction in the hands of Congress, to take effect or be escaped from, as that body might, in its wisdom, caprice, or prejudice, determine.

The first clause of the 4th is a useless declaration, that the money obligation of the United States to its defenders during the war should be observed. The second clause precludes the payment of the rebel debt by the United States; and time can alone determine the necessity of incorporating it into the Constitution.

XVIII. The 15th amendment seems to have been adopted to explain, enforce, and give effect to the 1st section of the 14th, and was promulgated to insure the exercise of the elective franchise to the colored citizens; and as it thus compels the various States now to observe and protect this right, it in effect repeals and expunges the discreditable 2d section of the 14th amendment.

It is contended by many able men, that this amendment recognizes the right on the part of the States to withhold the franchise from all but colored citizens, thus placing them on higher ground than that occupied by any other citizens. If this is so, it is not only unjust, but it also involves this apparent constitutional absurdity: The 1st section invests all citizens with the right of the elective franchise as a constitutional right; and this last, it is said, recognizes in the States the constitutional right to abrogate that constitutional right.

It is submitted that these sections are not amenable to this discrediting criticism.

XIX. We have been in the way of hearing the Constitution lauded to the fullest capacity of our language. It has been holden up, not only

as the crowning perfection of human excellence and wisdom, but as the only worthy object of veneration and preservation. During the late war we were constantly told that the measures employed to reduce the rebel States were so many sacrilegious violations of this sacred instrument; and we were taught that the Constitution was of so much more value than the country, that no hesitation should be felt in sacrificing the country to that instrument. This sounds ineffably absurd now. But the Constitution in times past was made the common barrier, behind which wrong, outrage, injustice, and all uncleanness found refuge, and may be used for the same purpose again; and it may be well to estimate it at its proper value, so far as we may. It was the work of men—of wise, able, sagacious, patriotic men, but still men—and partakes largely of common human imperfection. It can be changed, amended, or abolished, at the pleasure of our people.

Our country is the growth of two centuries, under favoring circumstances, and secures to us all that is desirable in human possession; all that is valuable produced by human labor; all that is excellent in human achievement; all that we have and are as individuals; everything dear to

memory or beautiful to hope; and its destruction would involve misfortunes to us individually, and to our countrymen collectively, that cannot be estimated or appreciated.

The Constitution has been one of the great aids to us—one of the means of our advancement and progress. It helped to make us a people, to grow to a nation, to become powerful and respected in the eyes of the nations, and to secure tranquillity and peace, in the presence of which we have made great progress. Let us cherish this Constitution. We revere it for all it has done in the past, as we revere the men who made it. We will trust and cling to it in the future, and as a means of help, and never as a fatal hindrance. As we discover imperfections in it, we will carefully and reverently amend and perfect it as our needs require, and as the fathers provided for. Let us not foolishly boast of it as the sublimest of human achievements. It may be. Let others see that. It has done well for us, and let us master, study, and enjoy it.

So, too, let us not boast of being the most powerful, wisest, and greatest of all the nations of the earth, of all time. Quite considerable peoples have flourished before our time, and other

remote parts of the earth are inhabited now. Let us quietly enjoy our greatness. If we are so everlastingly big, other nations will find it out sometime. I think we are greatest in promise and possibilities; and if we are modest and wise, we shall some time realize them; and you and I, in our best way, will, at the least, not be hindrances to that realization. But a true estimate of the Constitution is not found in a blind adoration of it. It can only be found by carefully ascertaining what it has done for us, and sagaciously anticipating what we may hope from it in the future. And I am not without the hope that I have helped you a little in these directions.

XX. The safety and durability of the Constitution rest wholly in this estimate of its value and capabilities by the masses of our people. In their enlightened judgment, love, and veneration of it can it alone find security. We are told much of its ingenious safeguards, its checks and balances, its cunning and curious adjustments, so as to avoid usurpation and misrule, and secure a wise and patriotic administration of its powers. After all, abstractly and of itself, it is a piece of dead parchment, curiously written over with

formulas and rules, all dead and powerless, unbreathing and unvitalized. Life and pulse, strength and power, heart, soul, mind, and inspiration must be imparted to it by the grasp of strong, tender, careful hands. Living hearts, strong brains, brave souls, and wise minds must engineer and work, manage, drive, and propel; and all these we must train, educate, pick out, select, mark, and set apart for these duties; and we must be ever present, and oversee and superintend, reward, and punish. And in the heat and paroxysm of a great and long-continued party struggle, how easy to disregard and depart from the Constitution; and how fatal such a departure may become, and how hard to return to it again sound and whole.

I repeat, that its only safety lies in an enlightened estimate of its real value by our people generally. It is utterly powerless to protect and care for itself, and may be torn and spit upon, save as guarded by those who love it.

XXI. When contrasted with a monarchy, one of the apparent differences between such a government and ours is in the manifestations of the power exercised. The king sits in his capital,

surrounded with his ministers, with all the regalia and physical insignia and trappings of royalty, with a standing army to enforce authority, and with the obvious channels in which that authority flows. The concentrated material reins of government all unite under his hand, and he depends upon coercion and fear to insure obedience and submission. Ours is a serene, unseen, unfelt, unheard reign of equal law, known only by the order and tranquillity which everywhere obtain. The men who for the time make, expound, or administer our laws and govern, come and go in our midst, unknown and indistinguishable from the mass of our citizens. No badge marks them; no insignia distinguishes them; no ceremony attends them; no marshal heralds them; no courtiers or lackeys surround them. No armed soldier, no flag or trapping, in any way find employment in our civil service. It is a silent reign of self-imposed law. Whoever can overthrow the prince and possess his capital, gathers up the material insignia of power, and rules, and by the same means. Destroy our capital; assassinate the President and Cabinet; banish both houses of Congress; destroy every copy of the Constitution and statutes; raze out every word and line

of authority, and murder every officer; annihilate every vestige of every State government, and yet the American institutions remain intact; and the American people would assemble in convention to-morrow, and restore the whole, improved by the hand that would destroy them. Such a government is perpetual, and such a people indestructible; and in this inner life and strength and power lies much of the excellence and value of our system of government.



## LECTURE VIII.

### THE PHILOSOPHY OF POLITICAL PARTIES.

I. POLITICAL parties have existed in all free governments, and, so far as we may forecast, they always will. One of the errors of the authors of our Constitution, if they committed any, was an under-estimate of the scope, strength, and bitterness of parties. Obviously their rise, progress, decline, and extinction are due to constantly-acting laws—laws many of them not difficult to discover; while others furnish evidence of their existence by the recurrence of similar phenomena alone.

I am not aware of any attempt to elucidate these laws or to trace such phenomena to their producing causes. I am sure the subject is one of very grave practical importance, as well as full of speculative interest. I shall take a look at it in the light of our times; and if my observations are not of a profound character, I hope

not to overlook things apparent on the surface, and, with no pretense of being erudite, I will honestly attempt to comprehend and do something to arrange what is apparent to me; and if I can stimulate some observing thinker or some thinking observer to turn his serious attention to it, I shall feel that I have rendered some service to American politics. Ours is a history rich in specimens of suddenly arising and of as suddenly subsiding parties: of abortive attempts to create, and of unavailing efforts to prolong or overthrow them.

II. All governments consist of at least three concurring agencies: the constitution or framework—that which distributes powers and prescribes the manner and means of their exercise: laws, rules, and regulations; the propelling power—that which works the machinery. In a free government these are legislatures, councils, congresses, parliaments, governors, presidents, with cabinets and courts and judges. And third, and more important, the directing and controlling intelligence—that which applies the power, keeps the machinery in motion, repairs or changes it, and dictates, within its productive capacity, what results shall be attained or attempted.

Of course the machinery must be formed with direct reference to the thing desired; but no machinery will work alone, and none can be long left to its operatives. The owners must supervise, direct, and oversee; and this makes every shareholder of power, and to some extent all the members of their families, practical politicians. It imposes upon them the necessity of having definite objects to be attained; to know the capacity and working power of their machine; a knowledge of the fitness of the agents—the operatives to be employed; and they must exercise a constant supervision over the whole. A people unable or unwilling to perform all these duties can easily escape from them. Every country has a plenty of men who will take the whole labor off their hands.

III. The machinery, then, must be worked with a fixed and certain purpose, clearly ascertained and agreed upon in advance, and before any general election of the officers and men who are to do the immediate work; for all these must be selected with special reference to their fitness to work out the proposed governmental object. Men must not only know beforehand what they want to

accomplish, but some certain, well-devised plan of action must be concerted among all who unite in it. Men, then, must concert, must agree, must unite, must act together. They can accomplish this purpose in no other possible way. And this concert of action and union of effort will necessarily be temporary or permanent, as they desire to accomplish a temporary thing or work out a succession of things, and establish and carry on a given policy. This last necessarily requires a permanent organization—the formation and maintenance of a political party; and whatever may be the evils and mischiefs attendant upon parties, their corruptions, and the bitterness of their struggles, I know of no other way of securing given results, of infusing new or old truths, of working any idea into governmental processes, save by the agency of parties. Some party must adopt, some party must favor, or it never will be practically realized. Of course, if adopted by one party, it will be opposed by the other, and at the hazard of defeat. But it insures a thorough examination of its properties, and a thoughtful application of it in practice; and with the two factors of merit in it, and intelligence with the people, its final success is assured.

IV. A political party may be said to be a voluntary association of persons, in their primary capacity, as the holders of political power, organized and maintained outside of the forms of law, to accomplish certain political objects. These may be a change in the structure of the government, a change in the *personnel* of those who carry it on, or a change in the policy of the government, or anything else. The organization is usually loose and general, and always understood rather than expressed. No large association, worthy to be called a party in this country, to my knowledge, ever had a written formula of rules and regulations, unless it was that mysterious and ephemeral organization called the Know-Nothings, which, like the gourd of the prophet, came and went in a night, and with much the same result. Usually those of distinctive political views act together by a common consent. Their ideas are formulated by resolutions, adopted by a convention, and accepted as the party platform, and their affairs are managed by a committee. Its code consists of a few generally-received rules, recognized by all parties, and such as impliedly govern the ordinary intercourse of honorable men: as, whoever subscribes to the platform is a member

of the party, with the right to vote at its primary meetings; and his contributions to its revenue are voluntary. In conventions, the common parliamentary law, which attaches itself to every deliberative assembly, in the absence of special rules, governs its deliberations. A majority rules: a law never departed from in this country, except in the two or three national democratic conventions preceding the recent war.

V. The final action of a convention is conclusive upon all the members of the party. This is necessarily the rule. All honorable men represented in a convention must hold themselves bound by its action; and this, in reference to its declaration of sentiments and its selection of candidates. Both of these matters are expressly or impliedly submitted to the general conventions of parties. They usually re-discuss the party platform in the light of all apparent changes in popular opinion, and pronounce the result authoritatively. They select the candidates, and decide their political, moral, and intellectual fitness; and no question as to any of these should be deemed to be longer open among the members of the party. A convention, for instance, nomi-

nates candidates for its own party, and not for its opponents; and it is really none of their business. Still they will assail them; and whenever they do, the party that nominated them will stand by them. As to the party, the question of fitness was finally settled. This, whatever may be said against it, is the only practical rule. No great evil can grow out of it, for it is against the plainest interest of any party to nominate bad men; and a bad man had better, in the opinion of prudent men, once in a while, be voted for, rather than that a party be broken up.

When I say that the members of a party are bound by the action of a convention, it is to be always understood that its proceedings were fair—nobody is bound by fraud—that it was governed by the understood usages of the party. I do not think that any convention can have the right to impose sentiments at war with its own creed upon the members of a party. I don't think it can go outside its party for candidates; nor do I think it has power to enter into a coalition with another party. These are clearly outside of its implied powers; and in such cases each member of the party is at liberty to follow his own judgment and inclinations.

VI. The fortune that dictates the names of parties is indeed capricious. They sometimes adopt or take a name, but it is often thrust upon them by their opponents in derision: a rule that has extended to religious parties as well, although these last have often been taken from the name of their founders or leaders, or sprung from some practice. The enemies of the French Protestants called them Huguenots, yet no man can tell why. The Whig party of England was named by its enemies in derision; and what the name meant was never explained, as nobody knows why their opponents were called Tories. The Jacobins of France took their name from the place where the parent club met, although the name appears to have been older. The young Netherlanders who resisted Philip II called themselves "The Beggars," and each wore a wooden spoon. In our own country the Federalists took their name from favoring the adoption of the federal Constitution, while their opponents finally called themselves Republicans. Jefferson's followers were sometimes called Jeffersonians, while Jackson for a time gave his name to his supporters. That party, for many years, a good many, in the histories of parties in this country, was constantly called by its opponents



Locofoco, while the present parties are known by names of their own choosing; and on the whole the rule with us is, that the great parties name themselves, while in a small way we have had the Bucktails and Barnburners and Hard and Softshells in New York, and the Freesoilers in Ohio and Massachusetts.

VII. It is the primary condition of the existence of a party that it have something to do; something to which it can direct the eyes of its followers; something to be worked for and finally accomplished; and something with life and humanity enough to be sympathized with. It need not be very high, and often is not, nor very logical: it is sufficient if it is expedient and practical. It should be obvious and palpable. When its existence has to be proven or made apparent by argument, the party will soon be in a bad way, as in the time of the old Whig and Democratic parties at their best, who had nothing to quarrel over but questions of finance and commercial policy. Think of Clay, Calhoun, Webster, and their great associates striding about and cutting paper dolls with the scissors of fate, or forging puppets with the hammers of the Cyclops.

A party organized to not do a thing—for instance, of men who don't believe in Kidd's money, and who associate to not dig for it—would probably subside; and parties cannot long be held actively together merely to elect to office and divide up the public plunder. The people finally grow weary of that. Nor will a party long go on merely by the law of inertia.

The old Federal party, though nearly monopolizing the talent, intelligence, and morality of its time, without the capacity to take new ideas, struggled in vain for life after the purpose of its existence disappeared from practical politics; and so the late Whig party, having abandoned opposition to slavery, and having no live thing to work for, disappeared in the presidential contest of 1852; and what a dreadfully bad way the Democratic party was in, when it annually had nothing to offer but its "time-honored" opposition to a national bank. That, it killed beyond resurrection years before. Nothing but slavery and its wars carried it forward; and even the awful power and vitality of slavery would not have preserved it long after the disappearance of its old rival. I shall recur to this matter again.

VIII. I may lay it down as a law, that a political party cannot be made. Men cannot produce a carefully-defined system of principles, and mark out a programme and policy, and then, by force of arrangement, combination, and conspiracy, persuade or force a party into existence. No matter how many conventions assemble, nor how unanimous their action, the essential life they cannot impart to it.

The numerous, persistent, well-arranged, and well-conducted experiments, always resulting in failure, in this country and in our time, warrant me in laying down the above as a fundamental law, and which, if it be a law, should be clearly ascertained and generally understood. Our history is rich in the fossils of these artificial parties. Think of the persistent efforts to create an anti-slavery party. Strong, wise, persistent, and very brave men and women labored hopelessly for years. Their labors were full of iucidental results, good in various ways, but beyond the actual carrying and placing, arranging and securing, by missionaries, no product, by way of a party, with body, limbs, and blood, was ever even outlined. There certainly was a great work to do—a work that appealed alike to men's judgments

and sympathies; but it did not enlist them, did not reach them. The time had not come. It did not open its own mouth, and cry out to be done. In 1848 a spasm produced the Freesoilers of Ohio and Massachusetts, and a political grudge the Barnburners of New York; but no party came into existence.

The recent memorable attempt of August, 1866, may be cited as an evidence of the truth of my proposition. The party in power were being swept forward with the still unspent tide, and somewhat blindly and unknowingly, towards the reconstruction of the States; the exact means and conditions of which were not very apparent, nor are they now, (February, 1869.) It was not, perhaps, remembered that crystallization of foundations and some new growth were necessary for a State. The President was under the full force of the law that compels a subordinate, who unexpectedly leaps to supreme power, for which he was never intended, to enact the character of an actual usurper, and was busy in thwarting, turning aside, and overturning the plans of his electors, to make way for a policy and reign of his own. The land was filled with the debris of the war, the broken fragments of

the rebellion, the wreck and ruin of States, and the elements of an overthrown civilization. Disgraced and dismissed officers; detected fraudulent contractors; dissatisfied aspirants for office; all the ill-contented, disappointed spirits, set loose from the ordinary walks of life; all the timid, doubting, hesitating moderates; all who were sick of existing rule—all these, with all the ordinary motives under which men act, combined and conspired to readjust public affairs, and control political action, by the formation of a new party. The Democratic party was in helpless ruins with its ally, the rebellion; and all its leaders out of employment were seeking new fields of enterprise, and a reconstruction of political fortunes. The revolution must at least be stayed; if not turned back; and a convention for the 13th of August, ever memorable, was called at Philadelphia. A spacious building was erected, every congressional district was represented, and the myriad outside world of enumerated elements congregated. There certainly was a great thing to do. Men were in earnest to do it. Many places there were, and many more who wanted them. The assembly attracted the eyes of the American world, and filled patriots with a real

apprehension. Everything concurred to aid; the auspices were favorable; the moon was right; and the sign in the stomach, or immediately below. A Senator and a Cabinet minister ruled, and harmony and silence were frozen. At the predestinated moment, Massachusetts and South Carolina, arm in arm, walked vicariously in, as logically united as a foul stomach and a nervous headache. A great editor read a piece, the great convention resolved a party, and in silence and tears one was supposed to have been born. A solemn benediction was pronounced, the great convention melted away, and the new party evaporated; and its memory lives only in the gibes of a scoffing world. You cannot create a party.

There must not only be an apparent thing to do, but it must in a way make itself apparent to many men by a sort of self-revelation—must in a way ask to be done.

IX. Old parties are conservative. Both distrust new ideas. Neither dares to adopt one—is afraid of the consequences. The platforms have been carefully adjusted, have been found well enough. Let them alone, and fight out the contests for power on the old issues. A new idea will upset

all. When a new idea is projected into the world, bowling along the thoroughfares of men, what a consternation it produces, and notably among politicians—practical men. They will have nothing to do with it. They would tumble it out one side, and bury it at once. As for the idea, it finds all the men monopolized by one or the other of existing parties, and is rejected of both. It can get itself worked into governmental processes only by the formation of a new party. It will not be hidden or retire. It gets a poet to put it into a song, and the common people sing it. Some thoughtful scholar writes it for all to read. Some apt orator throws it hissing into a crowd to explode. It begins to make converts, and it takes them indifferently from the old parties. It takes their best—the young, thoughtful, hopeful, and courageous—whatever and whoever it wants; and so it goes on, disintegrating both parties, and making discord, sowing dismay, and causing desertion, and gets itself and followers hated. It becomes strong, alive, is aggressive, like all new causes, and the result is, that the old parties, or their enfeebled remains, no matter how bitterly they may have hated and abhorred each other, readily unite in opposition to the new.

Thus it was when the utterly illogical idea of limiting the progress of slavery seized the minds of the men of the North. It at once took all the large anti-slavery element, which received it, as better than nothing, the fruit of the nominal Liberty party that was found in both parties, and sprung rapidly into proportions that challenged dominion in this country. The remains of the old parties, besotted and bedeviled, by the most natural process in the world, united and amalgamated in opposition; and in time the name Whig came to stand for a very respectable elderly gentleman, who drank the best of liquor, took the National Intelligencer, and voted the Democratic ticket, as was said.

X. As I have already remarked, the purpose and object which will create or sustain a party, need not be one of very elevated morality—may hardly be allied to morals; but it must be at least expedient and eminently practical, as in the instance just referred to. It was expedient to limit slavery. The freedom of the northern people from the dangers of its neighborhood and spread among themselves seemed to demand this action; and hence the Republican party. They had refused



to act against slavery, on its own account, and on what they conceded to be its own ground, no matter what it really was, or how it conducted itself there; and, as we see, refused to unite in a broad and logical party against it. And so also the Republican members of Congress united in the Crittenden resolutions, at the extra session of 1861, in which they declared that it was no purpose of the war to overthrow slavery; and but two members of the House voted against it. It was the declared purpose of the Republican party to subdue the rebellion and save slavery; but the war was stronger than the Republican party, and stronger than both houses and the President, and secured its own purposes. And, finally, when the councils of men doomed slavery, it was on the ground of expediency, and that has continued to be the only ground upon which has rested all the legislation of Congress protecting the rights of the emancipated slaves ever since, unless we except the abolition of slavery in the District of Columbia. I think the abstract right had much to do with that.

XI. I think it may be stated as a law, that there cannot at any one time exist but two parties in

a given State or People. There may be factions or temporary associations for a single purpose. Powerful leaders may have small and separate followings; and so, upon the breaking up of old parties, at the formation of a new one, there may for a time appear to be three. History gives us no instance of three armies in the field, each of which fought both of the others; and no man ever saw three men engaged in such a contest. Two will always coalesce against the third. The reason is so obvious as to be overlooked. A man asserts a certain fact, quality, status, or condition of a given thing, which is a challenge to somebody to deny it. He does not wait long for an opponent. They contend with warmth, and those attracted by the dispute come up and take sides with one or the other in dispute, as they happen to view it; and the way they look at it depends on their intelligence, habit of thought, association, and temperament; for the members of a party often have more things in common than a political bias or sentiment, and it is these other things that often determine that bias. And thus, you see, men divide, upon all questions of practical life, into two, and never into three parties. A given question may be capable of many views, and present

more than two sides; but men, in the unthinking way with which they deal with political or social questions—anything of common interest—take one of the two views already presented. It is the habit of the common mind to take opinions, and not to form them; and in politics these are ready-made.

XII. That party which wrests the machinery of government from its opponent, and succeeds to its place in the legislative and executive departments, necessarily encounters great peril from two sources: and so obvious that there is no excuse for their being overlooked.

A party seldom or never performs what it promised its followers and country, as inducement to sustain it in the preceding campaign. Parties promise too much, and often what should not be performed. They often find that what they promised cannot be performed. No party in this country ever promised more in advance than the Whig party in 1840. It did undoubtedly make an honest effort to enact the leading of its proposed measures, and was in the most of them defeated by the perversity which must govern an ordinary man who, as Vice President, succeeds to

the Presidency; and Mr. Tyler was a very ordinary man. Still, had they all been enacted into laws, and enforced in good faith, their conjoint result would have disappointed the people. But there is a law of human conduct which often forbids the attempt to fulfill a party promise. Almost all men—and this includes the leaders of parties—take vastly different views of things, the moment they find themselves in power and under responsibility, from what they did when they clamored as the partisan leaders of a fierce, unthinking opposition. They now, in the coolness that comes after the first glow of success, and when steady in the coveted places, find themselves, for the first time, in a position from which they can survey all sides, and properly estimate the view of their old opponents; and the best of reasons may be found to make them hesitate and temporize. And I think this may be deduced as a law: that success renders party leaders conservative. I use the word conservative to express a disinclination to make a sudden great change—a law, often salutary—little as I like the word conservative.

A failure to perform the promises of a party must necessarily be attended with consequences

often grave, no matter whether they ought to be kept or not, and without reference to the power to perform them. The people always understand a promise in its exaggerated form. They are always made to expect some immediate personal advantage. They are always disappointed, and not unfrequently make it a personal matter, and range themselves with their late enemies.

XIII. An imminent source of danger is the distribution of patronage. Under our practice, a party succeeding their opponents has in effect all the places, jobs, and contracts of the whole government at its disposal, which has come to be a powerful factor in stimulating exertion on either side. Often the more desirable places are promised, and sometimes the same one, to several. Upon the inauguration of a new administration, we are in the way of seeing our city thronged for months with an eager, hungry, clamorous set of not over well-favored place hunters. There will be from ten to one hundred applying for each; and it is marvelous how much the successful candidate owes to each of them. In our day, for instance, it was never known how many men severally secured the first nomination of Mr.

Lincoln, although it was pretty well known how many members of the two houses did not favor his renomination. There were at one time a great many original discoverers of Andrew Johnson; and an innumerable host of all sorts of men now present themselves each as *the* man who first gave form to the idea of elevating, as it is called, General Grant to the Presidency. One of the ten or one hundred will be selected, who will remain an active partisan; and the fact of his holding an office will render his partisanship comparatively useless; while the danger is, that the nine or ninety-nine unsuccessful ones become bitter enemies. More than one administration has broken down mainly through enmities engendered from the distribution of places.

XIV. The party failing becomes the party in opposition; and one of the benefits of parties is forcibly demonstrated by the practical uses of an opposition. In the legislature it is always present—keen, observant, scrutinizing, persistent, dogmatic, critical. Often unreasonable, frequently obstructing, bitterly unjust, thwarting a good measure, assailing a necessary one, at times unpatriotic, and always selfish, it is never-

theless, with all its faults and follies—its bitterness and hatred, its uncharitableness and narrow-sightedness—productive of so much absolute benefit, so much real good, that it is a necessity. It challenges everything; it opposes everything; it criticises everything. Nothing can escape it. Every measure has to be subjected to the test of adverse criticism, stimulated to expose every possible fault, weakness, defect, or want of merit. All that can be urged against it, and necessarily all that can be said for it, is brought out; and nothing can be better adapted to illustrate its virtues or expose its vices than such a debate. And when it is finally passed, it is usually in the shape to which it has been hammered in these party conflicts, and is not what either party alone would have enacted, but is generally the result of their conjoint effort.

Not alone is the force of opposition beneficial to legislation. The presence of a strong, vigilant, active, intelligent opposition, made up of able and honorable men, at the capital, is of immense benefit in various ways. The conduct of the party in power is always governed more or less by it. It affects the Executive almost as much. Nothing eludes it; and it can never be

silenced or purchased. In its presence men must be on their personal good conduct, in private as well as in public; and we cannot quite afford to dispense with the fear of exposure, as a provocation to negative virtue, here at the capital, more than elsewhere.

It may be said, as a general rule, where two powerful parties exist, neither of which is so feeble that it may not contest the supremacy of the other, that the final course of the government is the result of their opposing forces; that the direct power applied to it by either, when in power, is always modified by the indirect power of the other; and that, under these influences, its course is more likely to be in the line of good government than it would otherwise attain.

XV. It is a cardinal condition of the minority, that it must oppose every leading measure of party policy sustained by the majority, without the slightest reference to its merits, its justice, necessity, or expediency. It is seen in a moment that its very existence as a party depends on this: It must oppose or perish. Every country has many purely national things peculiar to itself—certain traditions and policies, not partisan, that both



parties sustain; so it must have certain expenditures, of army, navy, and civil list, that parties may unite upon; but when a great party measure is pending, they must divide, or the minority ends. Whenever the minority votes with the majority on such a measure, it is with them, and ceases to be a party; so that it holds its existence upon the hard necessity of opposing all leading distinctive measures, right or wrong.

If a nation becomes involved in a war, the war, its maintenance and success, is the leading, all-absorbing measure of the administration; and whoever and whatever sustains the war sustains the administration. For the time it becomes the country; and whoever opposes the administration opposes the war, and whoever opposes the war is for the time being the ally of the common enemy against his country.

A given administration is fighting a war. Now, all who oppose that administration are allies. They work for a common purpose, and of course help each other, whether they wish to or not. It is the logic of their position. Whoever embarrasses my foe helps me. If, while I am engaged in a personal contest with one enemy, another approaches and assails me, the two for the time

are the allies of each other—a joint, common enemy—whether their cause be the same or not. The Whigs of Great Britain accepted this position in our old War of Independence—Chatham, Fox, Burke, &c.; and so in the French Revolution Fox and Burke and their associates occupied and held the same position. When Fox succeeded to power, he made peace with France; and when Burke grew weary of being an enemy of his country, he threw away the revolutionary dagger, and rushed over to the ministerial benches, and crowded in between the younger Pitt and the burly Dundas.

The Federalists opposed the administration of Mr. Madison, and of course the War of 1812, and became the allies of the enemy, and openly sympathized with England. The Whigs opposed the Mexican War, to start with, and several of their leaders admitted their sympathy with the Mexicans; and neither of these parties long survived its course in the premises. It was a charge directly made, and felt to be just, that in each case the minority were allied with the common enemy. And this is the hardship of the position: To sustain the war disbands the party; to oppose it is to aid the enemy—often as fatal to the party.

The first gun at Sumter, for a time, annihilated parties. Doubt and uncertainty were ended, and our people had to face a frightful fact, of unknown proportions and obscure promise. When they recovered from the first surprise and discovery, they looked at it as Americans and men. While there were many opinions as to the proper course of action, colored undoubtedly by party predilections, yet men did not divide by party lines; and the unanimity and concert of action were little disturbed by party considerations. The dominant party, however, filled all the places of civil trust, and of course was responsible for the management of the war. It became identified with the country—for the time was the country; and apparently the success of the national cause would give it consistency and duration. Lost with the mass, a continued and habitual concurrence in the measures of the Government for an indefinite period, through unknown vicissitudes, was the absolute annihilation of the Democratic party.

This and other considerations induced Mr. Vallandigham, in the session of 1861-'62, to inaugurate a movement for the reproduction and reappearance of the democratic elements as a party, which was successful. Of course it had to be a

party in opposition. This was the sole condition of its existence. It had to oppose the war, and all the measures for the support of the war ; and it did persistently, bitterly, relentlessly. It opposed every measure for that purpose, and brought forward none of its own. The inevitable logic of its position made it the consistent, steady, and unwavering ally of the rebellion. This was steadily and persistently denied : a denial in the face of absolute demonstration.

The necessity of its position made it necessarily oppose all the measures of the still dominant party since the close of active war, and it naturally and logically came into the support of the present Executive, as it had before sustained Mr. Tyler and Mr. Fillmore under like conditions.

XVI. A conservative party cannot govern a progressive country. I presume this will be admitted. I use the term conservative in the broad sense of politicians, as one who adheres to the traditions, methods, and policy of the past ; one with his head turned reverently\* backward, who distrusts the present, and looks to the future with nothing but doubts and fears. There is a natural tendency in men to this conservatism. We attribute every-

thing to the fathers—wisdom, prowess, and all the virtues. They were best ; their ways best ; and there is no safety but in the use of their methods, and in the practice of their examples. Whoever can be accused of being wiser than his fathers, is amenable to ridicule ; and whatever has the sanction of their precept and the authority of their precedent, is strong in the popular confidence. And especially where a people has prospered under a given rule, or has been happy contemporaneously with certain measures, whatever was the real source of their prosperity, the common mind associates the rule and the measures with the favored condition, in the relation of cause and effect, and sees them abandoned with distrust and regret.

The American rule, however, is not to dwell in the houses of one's grandfathers. They were wise, strong, and prosperous, because they had the sagacity to depart boldly from precedent and usage and old methods, and wisely apply present helps to present wants. They did not regard their institutions as perfect, and forecasting the needs of the future, provided ample means for their change and amendment, as time and progress might require. They did not follow, they

made precedents. No man or set of men can long govern any modern nation, who has not a capacity to entertain and accept new ideas, new methods, and invent new policies. Conservatives can never govern any nation, unless it consents to stand still and let them. A modern nation will naturally out-grow and cast off the restraining measures and mediæval policies, as the young eagle escapes from its shell. In our day, a conservative is most like that obstinate animal, so powerful to stand still, strong in breeching; and a party of such men, strong only to not move, can be of no possible use, except as an opposition—a mere weight to steady.

The Democratic party, though it had much of the fresh young blood of the country in it, with many aspirations, nevertheless surrendered itself to slavery, that awful anachronism, and was obliged to accept a policy, and measures fitted to foster that—measures and policy which would dwarf the energies of free institutions to a stand still, while its actual progress was in the line of stealing land from one country to plant slavery on, and people from another to enslave on it. Of course, when slavery was arrested, and power departed from it, that party fell, and you nor I

will ever see it with its old grasp upon our country again. It can only serve the country in opposition.

One corollary of the above is, that a governing party must have a capacity to take new ideas. Another, that a conservative party is useful only in opposition.

XVII. For the improvement of party morals, the toning down of party spirit, and final softening of party asperities and bitterness, as also for the elevation of party aspirations, reliance must be placed in the more general diffusion of education, the increase of intelligence, and a consequent advance and elevation of public opinion and sentiment. Nothing ever will eradicate the mischiefs and evils which flow from these sources.

One of the greatest of these evils is the chronic aspersion of private reputation; and although we know that it is inspired by party hatreds, yet the constant detraction of a political opponent finally makes such an impression on the minds of his adversaries, that we may accept it as a rule, that people generally cannot do justice to the character and motives, the talents and public services, of any man, however eminent, pure, and patriotic, who

does not belong to their party. And it is sad to reflect, that every active public man will live and die the object of the hatred, execration, and detestation of one half of his countrymen. To me, this occasions the bitterest regret of any of the many mischiefs springing from party spirit.

XVIII. Of party leaders I must observe further, the remarkable declination which I think I have noticed within the last ten years in their power and influence with the members of their respective parties. I think this is a fact, and most significant. During the recent war, the people had no leaders; they drove the prominent men forward, or left them to lag along in the rear. And lord! how quick and relentlessly they whistle them off, the moment the slightest indication of faltering is discovered. See how they have cut off every man whom they suspect of supporting the present incumbent of the Executive Mansion.\*

Even the great preacher, the most popular idol of our day, wrote a letter from the South, and how he fell! When a great man stumbles now, nobody stumbles with him; and when he goes out from us, he goes alone. I can name a dozen instances to you.

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\* President Johnson.



It may be said that we do not now have men the equals of some of yesterday. That may be. But it is to be remembered, that each of those survived his popularity, while but one or two of them ever had any hold upon the popular heart. Chieftainship has passed away.

We are never to have such great men again. Men of the same ability will never occupy the same places among us in the future. The rapid elevation of the masses, I may say, has by much diminished the difference between great and common men—a difference that shall diminish, until in a way it will nearly vanish. All—most all—prominent men are great by comparison, rather than from inherent greatness. And as we approach them, they seem also to come towards us; and singularly enough, diminish as they approach.

This decline in the power and importance of so-called leaders—they have ceased to be such—is significant of the great advance of our people in intelligence, in thought, and of necessary independent opinion and action. Party drill will become obsolete, and party discipline a memory. The crack of the party whip is no more heard, and men care less for the party programme, than for the reason that dictated it. And already parties can count

less and less upon a following, and are obliged to resort more and more to a policy that will bear examination, and not suffer from criticism.

This would indicate an advance, rather than a decline of party morals. It is a most hopeful indication.

XIX. Parties, like other associations, assemble in conventions to arrange for an election, overhaul and readjust a platform, and especially to designate and place before the party, candidates for its support. As parties are coextensive with a congressional district, a State, or the United States, it is impossible for any considerable number of the whole to assemble, and the obvious method is by the selection of representatives or delegates. The results attained at these conventions have become the subjects of grave complaints; and so constantly as to bring the method of selecting candidates by conventions under frequent discussion; and it is supposed that there must be some inherent vice in the system itself that demands its abolition.

It is said that conventions no longer represent and reflect the wishes of the people. That candidates are constantly put in nomination, not only not the choice of the people, but in opposition to

a known preference. The convention was packed. Notoriously, the people as a whole, are indifferent, indolent, and lax in their attention to political questions in ordinary times, and especially everywhere away from political centers. In the rural districts the primary meetings are often wholly omitted, or at the best made up of half a dozen; and any man may be elected, who will be at the trouble of going to the convention. As one inevitable consequence, the vigilant, managing, intriguing working man, or ring, or clique, can secure a return of the required delegates merely by attention; while in the cities all the known means and appliances are employed. It is a contest between managers, intriguers, and dealers. The good are away. The consequence is, that the mass of the party finds itself confronted with an obnoxious candidate; with the choice of voting for him, not voting at all, or bolting. And I have observed that there never occurs a good time to bolt. As on the human form there is no good place for a boil, so with a party, there is never a good time to bolt, or pay off a political grudge.

Clearly, the fault is not in the system of conventions. It as surely springs from the inherent defects and vices of men. What can save them

from the results of laziness, carelessness, venality, and ignorance? These have always borne bad crops, and the remedy, that great unknown quantity. No system or scheme can be devised that will work out exemption from the evils and vices of human nature. None can be formed that the corrupt and designing will not use to their profit. The same means that secure the nomination of a bad candidate, notoriously elect United States Senators, and are felt everywhere in human life. The view is depressing, but just.

XX. There are many thoughtful men not active politicians, and many politicians of various complexions; many men dissatisfied with the past conduct of affairs, who predict new party organizations and new departures, to date from the inauguration new departures, to date from the inauguration of the new administration.\* They think that the dominant party has worked out its mission; that it can do no more good; and they would be glad to see its power for evil pass away. I may venture some words of that party, yet not as a partisan, I trust. It has been tried as no party was ever tried. For years of peril and disaster it constituted the country—its members were the people.

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\* March 4, 1869.

Unaccustomed to govern, and after a fierce elective campaign, it received the government from its opponents in fragments. The navy was dispersed, and the army disorganized, credit ruined, and commerce diminished. One half of the Republic was in possession of the rebellion, which was training and organizing armies to march on the capital, into which the new President had to steal in disguise as a fugitive. Their political opponents as a party, whose conduct of affairs had produced this state of things, became the allies of the common enemy, while the governments of the civilized world sympathized actively with the revolted States. To say that a party under these accumulated difficulties did not fail utterly and perish, is to give them higher praise than can be awarded to any other party of modern times. The Republicans of France met and conquered similar difficulties, but perished in their inability to govern themselves. The Republicans of America overcame all the obstacles that gathered for their destruction, and not only preserved their liberties, but they secured the freedom of three millions of slaves, and have placed the rights and liberties of both on an improved basis and a better foundation. As a party, they have evinced courage,

firmness, constancy, sagacity, invention, ability, skill, power, and wisdom, with a great capacity to receive new ideas, and adapt themselves to new conditions.

They have committed grave mistakes, made sad blunders, sometimes been weak, and often wrong. They have raised and equipped and kept on foot huge armies, and speculation and malversation have attended the public service.

They have collected and disbursed revenues that can find no expression in our old knowledge of the power of numerals, and fraud and abuse have found lodgings and hiding places in this branch of the service. But it is to be remembered that, for the last four years, they have not only had to govern the country under all the difficulties referred to, but have had to fence around, wall in, manacle, and fetter a hostile, obstinate, powerful and unscrupulous Executive, who alone appointed, instructed, and controlled the agents who transacted this public business, and whose main effort has been to so manage the affairs of the nation as to throw the greatest obstructions in the way of, and bring the worst odium upon, the party in power. That weak, bad, and wicked men find feeding grounds and resting places with that

party is obvious. If, while at the resting place where the election of General Grant leaves them, they do not purify and weed out these bad elements, the people will do well to distrust their party, and hold them to a more rigid accountability. But with their prestige, vigor, experience, and skill, with their aptitude for new ideas and progress, from whence may be expected the threatened danger? What law governing the progress of parties suspends over them the penalty of dissolution?

Their very majorities in Congress, though essential to government, have been dangerous to the integrity of the party, and should the apparent majority in the next Congress be further reduced, its quality would not be impaired.

It would seem that from their opponents the Republicans have more to hope than to fear; a compact, able, vigilant, and powerful opposition could be only useful to them. The grave questions with which they must still deal will in due time, and in some unexpected way, find their own solution, as questions always have and will. Their dangers are undoubtedly internal, and will spring from their own midst.

Formed as the party was to set limits to slavery,

that single issue was hardly broad enough for a permanent organization. All who for the time regarded that as a paramount question united as Republicans; and yet entertaining every shade of variant opinion on every other question of moment. This limitation of slavery strangled it, and logically, men may expect that, with the accomplishment of the purpose for which the party was formed, it would dissolve. By force of the laws I have attempted to evolve this would follow, were it not for intervening causes that take it out of their scope.

The pressure of the war gave consistency to the the party; its leaders and people became accustomed to act together, and endeared to each other. It has prestige and memories, and must remain until we have completed our transit to stable government. And with its capacity to advance, I can see no immediate cause for its decline, and none for its dissolution. And yet one may intervene in a month; and I repeat, if overthrown, this fate will be evolved from within.

XXI. Two vital questions are already in agitation by outline parties, and must sooner or later receive some political adjustment, neither of which



in any present aspect of it, presents that sharp, practical, and well-defined angle or handle, so necessary to seizure and adoption by political parties. One is the so-called woman question.

For certain reasons this never can, I think, be a controlling element for the formation or action of a party. Indeed, one involving sex probably never will. No question has so much negative strength; and none so little combining power. No set of men seriously oppose it; all stand good-naturally acquiescent, ready to yield to a demand made with any unanimity by women. Few men will actively co-operate to bring about such political changes as the question demands; for few men will feel, and fewer admit the necessity for the active participation of women in politics. And however a man may be convinced of the abstract right of women to vote; and however willing he might become to have his wife do it, he will be slow to feel the necessity for it; and slower still to ask her to do so, even when convinced of the necessity. He feels that it is a man's work, and he can do it himself.

The work is for women with women. The hindrance comes from them, and all the more powerful, because the motive for it is not founded

in reason; but lies shrouded in usage, prejudice, and caste. Woman also feels that it is man's work, and merely because he has always done it, and she shrinks from it. When she asks for it, she will receive it. When she comes forward to vote, the ballot-box will be open, the vote ready, and the way broad, clean, and flower-strewn. She will get it without a party.

And so of the labor question. This, too, though long agitated, full of merit and strength, and appealing to the needs of a vast majority, and the sympathy of all, has as yet assumed no shape, has taken no form, that makes it available as an organizing force. Although broad and palpable, it has not yet revealed its working power. When it does, it probably will find no set of men hardy enough to oppose it.

The practical and apparently expedient thing of limiting a day's work to eight hours has no vitality or force, as a working political element. The thing to do is to reach below, and readjust values, so that labor shall appreciate; while every thing else remains, a thing hardly within the jurisdiction of common politics; or, what is deeper and more radical still, things must be so changed that a man will work for himself, and not for another.

.. If this ever becomes a controlling party dogma, it will be in some such seemingly illogical way as that in which slavery presented itself finally. And what revelations it is capable of no man knows.

Both of these questions—the political status of women and the rights of labor—lie deep in the organic elements of society, and must to some extent depend upon a radical change of them and public sentiment, rather than upon direct political action: a change which the discussion already going on is slowly but certainly producing.

I have thus, gentlemen, quite imperfectly I am sure, given you my notions, the product of some experience and much observation, of the existence and workings of the laws that produce political parties, govern their workings, and limit their existence:—some of the elements of the philosophy of political parties.















